

No. 11107

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN FANNON,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court for the Territory of
Alaska, Third Division

FILED

DEC 28 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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GEORGE B. GRIGSBY,

Attorney at Law, Anchorage, Alaska.

Attorney for John Fannon,

Defendant and Appellant.

RAYMOND E. PLUMMER,

Assistant United States Attorney, Anchorage,
Alaska.

Attorney for United States of America,

Plaintiff and Appellee. [1*]

*Page numbering appearing at foot of page of original certified Transcript.

In the District Court for the Territory of Alaska
Third Division

No. 1848, Criminal

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN FANNON,

Defendant.

INDICTMENT

John Fannon is accused by the Grand Jury of the Territory of Alaska, Division Number Three, by this indictment, of the crime of knowingly failing and neglecting to perform a duty required of him under the provisions of the "Selective Training and Service Act of 1940, as amended," and the rules and regulations made and directions given thereunder, committed as follows:

The Said John Fannon, on or about the 30th day of October, 1944, within the jurisdiction of this Court, then and there being, and being then and there a registrant under the "Selective Training and Service Act of 1940, as amended", with the Local Selective Service Board Number One, at Kelso, Washington, and being then and there a transfer registrant with Local Selective Service Board Number One, at Anchorage, Alaska, did wilfully, knowingly, feloniously and unlawfully fail and neglect to perform a duty required of him under and in the execution of said Act and the rules

and regulations made pursuant thereto in that, having been classified by his local board, the same being Local Board Number One, at Kelso, [2] Washington, in Class 1-A, and having been duly and regularly transferred to Local Board Number One, at Anchorage, Alaska, for induction, and having been theretofore duly ordered and notified by said Local Board Number One, at said Anchorage, to report for induction at Fort Richardson, Alaska, on the 30th day of October, 1944, pursuant to the powers conferred upon such Board by the "Selective Training and Service Act of 1940, as amended" and the rules and regulations duly made pursuant thereto, the said John Fannon did then and there wilfully, feloniously, knowingly, and unlawfully fail and neglect to report at Fort Richardson, Alaska, for induction, as he was required to do by said order, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Dated at Anchorage, Alaska, this 23rd day of March, 1945.

/s/ RAYMOND E. PLUMMER

Assistant United States

Attorney

Witnesses examined before the Grand Jury:
Louise Annabel, Ruth Anderson. [3]

Endorsed on the back thereof:
District Court Territory of Alaska, Third Division
No. 1848 Cr.

UNITED STATES OF AMERICA,

vs.

JOHN FANNON

INDICTMENT

Violation of Selective Training and Service Act of
1940, as amended.

A True Bill,

/s/ JACK R. PECK

Foreman

Presented to the Court by the Foreman of the
Grand Jury in open Court, in the presence of the
Grand Jury and filed in the District Court, Terri-
tory of Alaska, Third Division. Mar. 24, 1945.

/s/ M. E. S. BRUNELLE

Clerk. [4]

United States of America,
Territory of Alaska—ss.

This is to Certify that I, Rose Walsh, acting
U. S. Commissioner for the Anchorage Precinct,
Third Judicial Division, Territory of Alaska have
compared the attached transcript with the original
records and that the same is a full, true and correct
copy and all and the whole thereof on page 185 of
Vol. No. 13 of Criminal.

In Witness Whereof, I have hereunto set my hand and have affixed my official seal at Anchorage, Alaska, this 30th day of January, 1945.

(Seal) /s/ ROSE WALSH

Acting U. S. Commissioner

[Endorsed]: Filed Jan. 30, 1945. [5]

In the United States Commissioner's Court for the Territory of Alaska, Third Judicial Division, Anchorage Precinct.

No. 5342

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN FANNON,

Defendant.

TRANSCRIPT OF PROCEEDINGS

before acting U. S. Commissioner.

1945

Jan. 9—Complaint filed in writing, verified on oath of Raymond E. Plummer, charging defendant with violation of Section 11, Selective Service and Training Act of 1940 as amended.

Jan. 9—Warrant issued to U. S. Marshal for execution.

Jan. 9—Warrant returned not served

Jan. 9—Telegraphic Warrant sent to Fairbanks

1945

Jan. 10—Warrant served and arrest of defendant

Jan. 13—Bail in the amount of \$1500.00 check from
J. A. McDonald, U. S. Marshal

Jan. 16—Subpoena issued for witness

Jan. 16—Defendant appeared with his Attorney,
Karl A. Drager, and advised of his rights,
waived right to make statement. Louise
Annabel testified on behalf of the United
States.

Jan. 16—Judgment. Defendant appearing with his
attorney, Karl A. Drager, and being ad-
vised of his right to make statement,
waived Statement. Louise Annabel ap-
pearing as witness for the United States
and from the testimony produced before
me, and it appearing that the crime of
Violation of Section No. 11, Selective
Service and Training Act of 1940 as
Amended has been committed, and that
there is sufficient cause to believe John
Fannon guilty thereof, I order him held
to answer in the sum of \$1500.00 as bail.

Done in open Court this 16th day of January,
1945.

(Seal) /s/ ROSE WALSH

Acting U. S. Commissioner.

Herewith attached the following original papers
and pleadings: Verified complaint, warrant of ar-
rest, Telegraphic warrant, subpoena, Check
\$1500.00 signed by J. A. McDonald, letter. Judg-
ment. [7]

In the United States Commissioner's Court for the
Territory of Alaska, Third Division; Anchor-
age Precinct at Anchorage.

No. 4342

UNITED STATES OF AMERICA

vs.

JOHN FANNON

COMPLAINT

For Violation of Section 11, Selective Service &
Training Act of 1940, as Amended.

John Fannon is accused by Raymond E. Plum-
mer in this Complaint of the crime of.....
..... committed as
follows, to-wit:

The Said John Fannon in the Territory of
Alaska, and within the jurisdiction of this Court,
did wilfully, feloniously and unlawfully, on the
30th day of October, 1944, at Anchorage, Alaska,
fail to report for induction as ordered by Local
Board No. 1 of Anchorage, Alaska, contrary to the
form of the statute in such case made and provided
and against the peace and dignity of the United
States of America.

/s/ RAYMOND E. PLUMMER

United States of America,
Territory of Alaska—ss.

I, Raymond E. Plummer being first duly sworn,
depose and say that the foregoing complaint is true.

/s/ RAYMOND E. PLUMMER

Subscribed and sworn to before me this 9th day
of January, 1945.

(Seal) /s/ ROSE WALSH

Acting Commissioner and ex-officio justice of the
Peace. At Anchorage, Alaska. [8]

In the United States Commissioner's Court, Ter-
ritory of Alaska, Third Division, Anchorage
Precinct at Anchorage.

No.

UNITED STATES OF AMERICA

vs.

JOHN FANNON

WARRANT OF ARREST

In the Name of the United States of America:
To the United States Marshal of the Territory of
Alaska, Third Division, or Any of His Dep-
uties,

Greeting:

Information upon oath having been this day laid
before me that the crime of failing to report for
induction, as ordered by Local Board No. 1 at An-

chorage has been committed and accusing John Fannon thereof,

You Are, Therefore, hereby commanded forthwith to arrest the above-named John Fannon and bring him before me at my office in Anchorage, Alaska or, in case of my absence or inability to act before the nearest accessible magistrate.

Dated at Anchorage, Alaska, this 9th day of January one thousand nine hundred and forty-five.

(Seal) /s/ ROSE WALSH
Acting United States Commissioner and ex-Officio
Justice of the Peace.

Bail \$1500.00. [10]

In the United States Commissioner's Court for the
Territory of Alaska, Third Judicial Division,
Anchorage Precinct.

No. 5342

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN FANNON,
Defendant.

JUDGMENT

Defendant appearing with his attorney, Karl A. Drager, and being advised of his right to make statement, waived statement. Louise Annabel appearing as witness for the United States and from the testimony produced before me, that the crime

of Violation of Section 11, Selective & Training Act of 1940 as Amended has been committed and that there is sufficient cause to believe John Fannon guilty thereof, I order him held to answer in answer in the sum of \$1500.00 bail.

Done in Open Court this 15th day of January, 1945.

(Seal) /s/ ROSE WALSH

Acting U. S. Commissioner

In the United States Commissioner's Court for the
Territory of Alaska,, Third Division Anchor-
age Precinct at Anchorage.

United States of America,
Territory of Alaska—ss.

SUBPOENA

To Louise Annabel, Greeting:

You Are Commanded to be and appear before the undersigned, a United States Commissioner at Anchorage, Alaska, at the hour of 2 o'clock P.M., on the 16th day of January, 1945, at the courthouse in Anchorage, Alaska, then and there to testify as a witness in a criminal action, wherein the United States is Plaintiff and John Fannon; and bring with you all the records of Local Draft Board No. 1, Anchorage, Alaska, in connection with registrant John Fannon; is Defendant, on behalf of the Plaintiff. Hereof Fail Not.

In Witness Whereof, I have hereunto set my

hand and official seal this 16th day of January, 1945.

(Seal) /s/ ROSE WALSH
Acting Commissioner and Ex-Officio Justice of the
Peace.

On the back thereof:

United States of America,
Territory of Alaska—ss.

I Certify that I received the within Subpoena on the 16th day of January, 1945, and executed the same on the 16th day of January, 1945, by reading and showing the original and delivering a copy thereof to Louise Annabel, the person therein named, at Anchorage, Alaska. [14]

JAMES H. PATTERSON

United States Marshal

By /s/ OSCAR OLSON

Deputy United States Mar-
shal [15]

Department of Justice

United States Marshal

Fourth Division, District of Alaska

Fairbanks

January 11, 1945

Miss Rose Walsh,
Acting U. S. Commissioner,
Anchorage, Alaska.

Dear Miss Walsh:

Herewith enclosed is my official check No. 1398

for \$1,500.00 to your order, covering cash bail deposited in the case of U. S. vs. John Fannon.

Fannon was arrested yesterday afternoon and released under the above bail. He stated that he would return to Anchorage in connection with this case today if he could obtain space.

Yours very truly,

J. A. McDONALD,

U. S. Marshal,

/s/ By E. A. TONSETH,

Office Deputy.

Cncls.

P. S. The telegraphic warrant, with our return of service, was air mailed to the U. S. Marshal, Anchorage, last evening. [16]

4th Div. Terr. of Alaska, Received, Jan. 10, 1945.

Office of U. S. Marshal Fairbanks, Alaska

KFB V KZENR46

From Edmunds Anchorage Alaska January 9 1944
to Joseph McDonald United States Marshal

Fairbanks, Alaska

0763

GR178 JUS

Hold the Following Warrant of Arrest Quote in the United States Commissioners Court Territory of Alaska Third Division Anchorage Precinct at Anchorage CMA United States of America v John Fannon CMA Warrant of Arrest CMA in the Name of the United States of America Colon to the

United States Marshal of the Territory of Alaska
Third Division or Any of His Deputies Greeting
Information Upon Oath Having Been This Day
Laid Before Me That the Crime of Failing to Re-
port for Induction As Ordered by Local Board
Number One at Anchorage Has Been Committed
and Accusing John Fannon Thereof Period You
Are Thereby Hereby Commanded Forthwith to Ar-
rest the Above Named John Fannon and Bring
Him Before Me at My Office in Anchorage Alaska
or in Case of My Absence or Inability to Act Before
the Nearest Accessible Magistrate Period Dated at
Anchorage Alaska This Ninth Day of January One
Thousand Nine Hundred and Forty Five Period
Signed Rose Walsh Acting United States Commis-
sioner and Ex Officio Justice of the Peace Unquote
Bail Set at Fifteen Hundred Dollars

0253Z [17]

United States of America,
Territory of Alaska—ss.

I Hereby Certify That I received the above war-
rant on the 10th day of January, 1945, and served
the same by arresting the winthin-named defendant,
at Fairbanks, Alaska, upon the 10th day of Jan-
uary, 1945, and thereupon released defendant under
\$1500.00 cash bail.

Dated at Fairbanks, Alaska, January 10, 1945.

J. A. McDONALD

U. S. Marshal

By /s/ CHESTER T. SPENCER,

Deputy [19]

No. 1848 Cr.

M. O. SETTING TIME FOR ARRAIGNMENT

Now at this time, on motion of Raymond E. Plummer, Assistant United States Attorney,

It Is Ordered that the time for the arraignment of the defendant in cause No. 1848 Cr., entitled United States of America, plaintiff, vs. John Fannon defendant, be, and is hereby, set for 2:00 o'clock P. M. of Wednesday, March 28, 1945.

Entered Court Journal No. G-10 Page No. 94
Mar. 28, 1945. [20]

No. 1848 Cr.

ARRAIGNMENT AND PLEA OF NOT GUILTY

Now on this day came Raymond E. Plummer, Assistant United States Attorney, for and in behalf of the Government, came also the defendant John Fannon in cause No. 1848 Cr., entitled United States of America, plaintiff, vs. John Fannon, defendant, in person and represented by his counsel, Karl A. Drager, Esq.; whereupon defendant was brought before the bar of this Court and being asked if he was indicted by his true name and answering that he was, defendant and his counsel both expressly waived the reading of the indictment and a copy of said indictment, including a list of the names of the witnesses appearing before the Grand Jury for the purpose of the indictment, was delivered to said defendant by the Clerk of the Court;

Whereupon, defendant, in person, and through his counsel, expressly waived time to plead and announced to the Court that he is ready to enter his plea herein, and being asked by the Court if he is guilty or not guilty of the crime charged against him in the indictment, to-wit: Knowingly failing and neglecting to perform a duty required of him under the provisions of the Selective Training and Service Act of 1940, as amended, and the rules and regulations made and directions given thereunder, defendant says he is not guilty and therefore puts himself upon the Country, and the Assistant United States Attorney, for and in behalf of the Government, does the same.

Entered Court Journal No. G 10 Page No. 128,
Apr. 2, 1945. [21]

No. 1848 Cr.

M. O. SETTING CAUSE FOR TRIAL

Now at this time, on motion of Karl A. Drager, Esq., counsel for the defendant, Raymond E. Plummer, Assistant United States Attorney, being present and consenting thereto,

It is Ordered that cause No. 1848 Cr., entitled United States of America, plaintiff, vs. John Fannon, defendant, be, and is hereby, set for trial at 10:00 o'clock A. M. of Monday, April 9, 1945.

Entered Court Journal No. G-10 Page No. 135,
Apr. 3, 1945. [22]

No. 1848 Cr.

TRIAL BY JURY

Now came the members of the regular panel of Petit Jurors, not heretofore excused, came Raymond E. Plummer, Assistant United States Attorney, for and in behalf of the Government, came also the defendant in cause No. 1848 Cr., entitled, United States of America, plaintiff, vs. John Fannon, defendant, in person and with Karl A. Drager, Esq., of his counsel, and both sides announcing themselves as ready for trial, the following proceedings were had, to-wit:

The Clerk, under the direction of the Court, proceeded to draw from the trial Jury Box, one at a time, the names of the members of the regular panel of Petit Jurors, and respective counsel examined and exercised their challenges against the Jurors, so drawn, until both sides were satisfied and the Jury complete, consisting of the following named persons, to-wit:

1. Morris L. Porter
2. Oscar Nielsen
3. Mrs. Ingeborg Erickson
4. Selma Smith
5. John Beaton
6. Mrs. Florence Mau
7. Alva Rutherford
8. Peter Hoff
9. Cecil Burgan
10. Elizabeth Rexford
11. Signey H. Hamilton
12. Mrs. M. J. McDonald

which said Jury was duly sworn by the Clerk to well and truly try the matters at issue in the above entitled cause and a true verdict render in accordance with the evidence and the instructions given by the Court.

Whereupon the Court excused all members of the regular panel of Petit Jurors, not engaged in the trial of this cause, to report at 10:00 o'clock A. M. of Tuesday, April 10, 1945.

At 11:50 o'clock A. M., the Court duly admonished the Trial Jury, and continued the trial of this cause until 2:00 o'clock P. M. of Monday, April 9, 1945.

Entered Court Journal No. G 10 Page No. 161,
Apr. 9, 1945. [22]

Trial by Jury Continued

Now came the Trial Jury who, on being called, each answered to his or her name, came the defendant, in person, came also the respective counsel, as heretofore, and the trial of cause No. 1848 Cr., entitled United States of America, plaintiff, vs. John Fannon, defendant, was resumed.

Opening statement to the Jury was made by Raymond E. Plummer, Assistant United States Attorney, for and in behalf of the Government.

Statement to the Jury was made by Karl A. Drager, Esq., for and in behalf of the defendant.

Ruth Anderson, being first duly sworn, testified for and in behalf of the Government.

A folder containing the records and file of John

Fannon with Draft Board #1, Kelso, Washington, was duly offered, marked and admitted in evidence as plaintiff's Exhibit 1.

On cross examination of the witness Ruth Anderson, a letter from the Cowlitz County Local Board No. 1, Selective Service System, addressed to John Fannon, Anchorage, Alaska, dated August 27, 1943, was duly offered, marked and received in evidence as defendant's Exhibit A.

On cross examination of the witness Ruth Anderson, three return receipts for registered mail sent Local Board #1, Selective Service System, Kelso, Washington, by John Fannon, were duly offered, marked and admitted in evidence as defendant's Exhibits B-1, B-2 and B-3.

Louise Annabel, being first duly sworn, testified for and in behalf of the Government. [24]

A transfer Preinduction Physical Examination Application of John Fannon, dated July 25, 1944, was duly offered, marked and admitted in evidence as plaintiff's Exhibit 2.

An Order to report, Preinduction Physical Examination, addressed to John Fannon, dated August 11, 1944, was duly offered, marked and admitted in evidence as plaintiff's Exhibit 3.

A Certificate of Fitness of John Fannon, dated August 25, 1944, was duly offered, marked and admitted in evidence as plaintiff's Exhibit 4.

An Order to Report for Induction, addressed to John Fannon, dated September 26, 1944, was duly offered, marked and admitted in evidence as plaintiff's Exhibit 5.

A Request for Transfer for Delivery, of John Fannon, was duly offered, marked and admitted in evidence as plaintiff's Exhibit 6.

An Order to Report for Induction, addressed to John Fannon, dated October 18, 1944, was duly offered marked and admitted in evidence as plaintiff's Exhibit 7.

A Delinquent Registrant Report on John Fannon, addressed to Noel K. Wennblom, United States Attorney, dated October 30, 1944, was duly offered, marked and admitted in evidence as plaintiff's Exhibit 8.

M. E. S. Brunelle, being first duly sworn, testified for and in behalf of the Government.

The Government rests.

Raymond E. Plummer, being first duly sworn, testified for and in behalf of the defendant.

At 4:55 o'clock P. M., the Court duly admonished the Jury and continued the trial of this cause until 10:00 o'clock A. M. of Tuesday, April 10, 1945.

Entered Court Journal No. G 10 Page No. 163, Apr. 9, 1945, [25]

Now came the Trial Jury who, on being called, each answered to his or her name, came the defendant, in person, came also the respective counsel, as heretofore, and the trial of cause No. 1848 Cr., entitled United States of America, plaintiff, vs. John Fannon, defendant, was resumed.

The defendant rests.

The Government rests.

Opening argument to the Jury was had by Raymond E. Plummer, Assistant United States Attorney, for and in behalf of the Government.

Argument to the Jury was had by Karl A. Drager, Esq., for and in behalf of the defendant.

Closing argument to the Jury was had by Raymond E. Plummer, Assistant United States Attorney, for and in behalf of the Government.

Whereupon the Court read its instructions to the Jury and George Johnson and Mrs. Jessie M. Dolan were duly sworn by the Clerk as bailiffs in charge of said Jury, and at 12:10 o'clock P. M. the Jury retired in charge of their sworn bailiffs to deliberate upon their verdict.

Entered Court Journal No. G 10 Page No. 166,
Apr. 10, 1945. [26]

Now at 2:25 o'clock P. M. came the Jury, in charge of their sworn bailiffs, who, on being called, each answered to his or her name, came also Raymond E. Plummer, Assistant United States Attorney, came also the defendant with his counsel, Karl A. Drager, Esq., and said Jury did present, by and through their Foreman, in open Court, their verdict in cause No. 1848 Cr., entitled United States of America, plaintiff, vs. John Fannon, defendant, which are in words and figures as follows, to-wit:

“In the District Court for the Territory of Alaska
Third Division

No. 1848, Cr.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN FANNON,

Defendant.

VERDICT

We, the jury, duly selected, impaneled and sworn to try and determine the issues in the above entitled case, find the defendant guilty as charged in the indictment herein. With recommendation for leniency.

Dated at Anchorage, Alaska, this 10 day of April, 1945.

/s/ MORRIS L. PORTER

Foreman

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division Apr. 10, 1945. M. E. S. Brunelle, Clerk. By Maxine Stringfellow, Deputy.

Entered Court Journal No. G 10 Page No. 166, Apr. 10, 1945.

and after polling of Jury the court ordered the verdict filed and discharged the Jury to report at 3:30 o'clock P. M. of [27] Tuesday, April 10, 1945.

Entered Court Journal No. G 10 Page No. 166, Apr. 10, 1945. [28]

In the District Court for the Territory of Alaska
Third Division

No. 1848, Cr.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN FANNON,

Defendant.

VERDICT

We, the jury, duly selected, impaneled and sworn to try and determine the issues in the above entitled case, find the defendant guilty as charged in the indictment herein. With recommendation for leniency.

Dated at Anchorage, Alaska, this 10 day of April, 1945.

/s/ MORRIS L. PORTER

Foreman

Entered Court Journal No. G 10 Page No. 166,
Apr. 10, 1945.

[Endorsed]: Filed Apr. 10, 1945. [29]

No. 1848 Cr.

M. O. PRONOUNCING SENTENCE

Now at this time came Raymond E. Plummer, Assistant United States Attorney, for and in behalf of the Government, came also the defendant, in person and with his counsel, George B. Grigsby, Esq., and this being the time heretofore set for

pronouncement of sentence in cause No. 1848 Cr.,
entitled United States of America, plaintiff, vs.
John Fannon, defendant,

The Court now pronounces sentence against said
defendant and directed the Assistant United States
Attorney to prepare and submit a written judgment
and sentence in accordance with the oral sentence
given herein.

Entered Court Journal No. G 10 Page No. 394,
June 12, 1945. [30]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: John Fannon,
428 E. 4th Avenue, Anchorage, Alaska.

Name and Address of Appellant's Attorney:
George B. Grigsby, 824 N. Street, Anchorage,
Alaska.

Offense: Knowingly failing and neglecting to
perform a duty required of him under the provisions
of the Selective Training and Service Act of
1940, as amended, and the rules and regulations
made and directions given thereunder.

Date of Judgment: June 12, 1945.

Brief Description of Judgment or Sentence: Im-
prisonment in the Federal Jail at Anchorage,
Alaska, for a term of one (1) year, and a fine of
Two Thousand (\$2,000.00) Dollars.

Name of Prison Where Now Confined If Not on
Bail: Released on bail.

I, the above named Appellant, hereby appeal to

the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

/s/ JOHN FANNON

Appellant

Dated June 16, 1945. [31]

GROUND OF APPEAL

1.

Insufficiency of the evidence to justify conviction in that there was no evidence supporting the allegation of the indictment that the defendant did wilfully fail to report for induction at Fort Richardson, Alaska, on the 30th day of October, 1944.

2.

Errors in law occurring at the trial in the admission and rejection of evidence, and excepted to by the defendant, which defendant is at this time unable to specify for the reason that the stenographer's notes of the trial are not available, owing to the absence of the Court Stenographer from Anchorage, Alaska, and for the reason that the attorney for defendant, who represented him at the trial, is now deceased.

3.

Error in law occurring at the trial and excepted to by the defendant in that the Court refused to instruct the jury on the question of criminal intent, as requested by defendant in his written request for such instruction, presented to the Court in

writing and on file in the records and files in this action.

4.

Errors in law occurring at the trial and excepted to by the defendant as set forth in defendant's written "Memorandum of Exceptions" to the Court's instructions, said memorandum being on file in the records and files of this action.

5.

Error of the Court in overruling defendant's motion for a new trial, filed April 14, 1945, to which ruling defendant excepted and exception was allowed.

6.

Error of the Court in overruling defendant's amended motion for new trial, filed May 1, 1945, to which ruling defendant excepted and exception was allowed.

7.

Error of the Court and abuse of discretion in overruling defendant's motion for a new trial, based on newly discovered evidence, filed June 8, 1945, to which ruling defendant excepted and exception was allowed.

Service acknowledged June 18, 1945 at 1:40 P. M.
for

RAYMOND E. PLUMMER,

Asst. U. S. Attorney

/s/ CATHERINE BRUNDAGE

Deputy Clerk

[Endorsed]: Filed June 16, 1945. [32]

No. 1848 Cr.

M. O. EXTENDING TIME TO FILE BILL OF
EXCEPTIONS

Now at this time, on oral motion of George B. Grigsby, Esq., counsel for the defendant in cause No. 1848 Cr., entitled United States of America, plaintiff, vs. John Fannon, defendant,

It Is Ordered that the appellant shall have sixty (60) days in which to procure to be settled and filed with the Clerk of the Court a bill of exceptions in said cause.

Entered Court Journal No. G 10 Page No. 423,
June 23, 1945. [33]

In the District Court for the Territory of Alaska
Third Division

No. 1848, Criminal.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN FANNON,
Defendant.

JUDGMENT AND SENTENCE

This cause coming on to be heard before this Court on the 12th day of June, 1945, the United States of America appearing, and being represented by Raymond E. Plummer, Assistant United

States Attorney for the Third Division, Territory of Alaska, and the defendant being personally present in Court, and being represented by his attorney, Geo. B. Grigsby, Esquire, and it appearing to the Court that on the 24th day of March, 1945, the Grand Jury, duly empaneled and sworn for the Third Division of the Territory of Alaska, returned an indictment in one count, charging the above named defendant with the crime of violating the Selective Training and Service Act of 1940, as amended; thereafter, and on the 2nd day of April, 1945, said defendant personally appeared in Court with his attorney, Karl A. Drager, Esquire, and was duly arraigned, and defendant and his counsel both expressly waived the reading of the indictment, and a copy of said indictment, including a list of the names of the witnesses appearing before the Grand Jury for the purpose of the indictment was delivered to said defendant by the Clerk of the Court; and [34] said defendant was asked if he was indicted by his true name, to which he answered in the affirmative; thereafter, and on the 2nd day of April, 1945, said defendant appeared in Court with his counsel and entered his plea of not guilty to the crime charged in the indictment filed herein;

And it appearing to the Court that heretofore, upon a full trial before this Court and a Jury, the defendant, John Fannon, was found guilty of the crime of knowingly failing and neglecting to perform a duty required of him under the provi-

sions of the Selective Training and Service Act of 1940, as amended, and the rules and regulations made, and directions given thereunder, as charged in said indictment, heretofore found by the Grand Jury of the Territory of Alaska, Third Division, against said defendant, John Fannon;

Whereas by reason of the law and the premises;

It Is Considered, Adjudged, and Ordered, and the Court does hereby Consider, Adjudge, and Order that the defendant, John Fannon, is guilty as found by said verdict of said Jury of the crime of knowingly failing and neglecting to perform a duty required of him under the provisions of the Selective Training and Service Act of 1940, as amended, and the rules and regulations made and the directions given thereunder, as charged in said indictment, for having on or about the 30th day of October, 1944, within the jurisdiction of this Court, and being then and there a registrant under the Selective Training and Service Act of 1940, as amended, with Local Selective Service Board Number One, at Kelso, Washington, and being then and there a transfer registrant with Local Selective Service Board Number One, at Anchorage, Alaska, wilfully, knowingly, feloniously, and unlawfully failing and neglecting to perform a duty required of him under and in the execution of said Act and the rules and regulations [35] made pursuant thereto in that, having been classified by his Local Board, the same being Local Board Number One, at Kelso, Washington, in Class 1-A, and having

been duly and regularly transferred to Local Board Number One, at Anchorage, Alaska, for induction, and having been theretofore duly ordered and notified by said Local Board Number One, at said Anchorage, to report for induction at Fort Richardson, Alaska, on the 30th day of October, 1944, pursuant to the powers conferred upon such Board by the Selective Training and Service Act of 1940, as amended, and the rules and regulations duly made pursuant thereto, the said John Fannon wilfully, feloniously, knowingly, and unlawfully failed and neglected to report at Fort Richardson, Alaska, for induction, as he was required to do by said order, as charged by said indictment filed herein;

Thereafter and on the 12th day of June, 1945, said defendant and his counsel Geo. B. Grigsby, Esquire, personally appeared in Court and the said defendant was asked by the Court if he had anything to say why sentence of the Court should not be pronounced against him, and his counsel having been heard by the Court,

Now, Therefore, it is the Order and Sentence of the Court that the defendant, John Fannon, for said offense by him committed be imprisoned in the Federal Jail at Anchorage, Alaska, for the term and period of One (1) Year, and that said defendant pay a fine of Two Thousand (\$2000.00) Dollars, and that he stand committed until said sentence is executed.

It Is Further Ordered that the said defendant, John Fannon, upon his failure to pay the fine

herein pronounced be imprisoned in the Federal Jail at Anchorage, Alaska, One (1) Day for each Two (\$2.00) Dollars thereof; [36]

It Is Further Ordered that the Judgment and Sentence herein pronounced shall take effect and commence upon the 12th day of June, 1945, the date upon which the oral Judgment and Sentence of the Court was pronounced.

Signed in Open Court at Kodiak, Alaska, on this 27th day of June, 1945.

/s/ ANTHONY J. DIMOND

District Judge.

Receipt is hereby acknowledged of the foregoing Judgment and Sentence by me this.....day of , 1945, at Anchorage, Alaska.

.....

Attorney for Defendant.

Entered Court Journal No. G 10 Page No. 441, June 27, 1945.

[Endorsed]: Filed June 27, 1945. [37]

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be It Remembered:

That this cause came on for trial before the above-entitled court, sitting at Anchorage, Alaska, on the 9th day of April, 1945, the plaintiff appearing by Assistant United States Attorney, Raymond E. Plummer, the defendant appearing in person and by his attorney, Karl A. Drager, and the following proceedings were had: A jury having been duly impaneled and sworn,

RUTH V. ANDERSON,

called as a witness on behalf of the United States, being first duly sworn, testified as follows:

Direct Examination

By Raymond E. Plummer, Assistant United States Attorney:

My name is Mrs. Ruth V. Anderson, I reside at Kelso, Washington, and am employed by the Kelso Selective Service Board in the capacity of assistant clerk for Local Board No. 1. As part of my duties as such assistant clerk I have the care, custody and control of the records of that office. The object which has just been handed to me is the file of John Fannon of Local Board No. 1 of Kelso, Washington; that is the original record of Local Board No. 1 of Kelso, Washington of John Fannon. [38]

The file identified by the witness was offered and

(Testimony of Ruth V. Anderson.)

admitted in evidence without objection and marked "Plaintiff's Exhibit No. 1".

(This and other exhibits not read to the jury are hereunto appended, and made a part of this Bill of Exceptions.) [39]

Witness continuing: According to the file the latest address we had was in care of Karl Krager, Anchorage, Alaska. The file shows that Mr. Fannon registered with Local Board No. 1 on October 16, 1940. According to the summary of actions taken by the Local Board No. 1, Kelso, Washington, according to the questionnaire I have before me, on April 16, 1941 registrant was classified 4-F and Form 57 mailed to registrant. On May 22, 1941 he was reclassified to Class 3 and notice of classification mailed to registrant the next day. On October 6, 1942 he was classified 1-H. On November 9, 1942 the registrant was classified to 1-A and on November 10, 1942 notification was sent to the registrant. On November 16, 1942 he was reclassified to 2-B and on November 17, 1942 the notice of that classification was mailed to the registrant. On February 8, 1943 he was reclassified to Class 1. On May 1, 1943 he was reclassified to 1-A and on the 6th notice of classification was mailed to the registrant. On October 18, 1943 registrant was rejected at induction station—pardon me—registered on August 17, 1943 and reclassified to 4-F October 18, 1943. On October 21, 1943 registrant was mailed notice of such classification, form 57,

(Testimony of Ruth V. Anderson.)

and appeal agent notified. On June 29, 1944 registrant was reclassified to 1-A and notice of classification mailed on July 7, 1944 and appeal agent notified. On September 20, 1944 form 218 was mailed to registrant and he was qualified for Army General Service under preinduction physical dated August 25, 1944.

Q. Referring to your records there his classification in August of 1944 was what?

A. 1-A.

Q. Does your file reflect whether or not he was ordered to report for preinduction physical examination?

A. He qualified on August 25th. [40] My record shows that he was ordered to report for induction by Local Board No. 1 at Kelso, Washington on October 12 and transferred to the Board here. He was transferred automatically by direction of the State Director. The regulations provide for such transfer. He was duly and regularly transferred to Local Board No. 1 of Anchorage, Alaska. We have a letter from the registrant written February 17, 1945. (Witness reads letter) as follows: "This is addressed to Local Board No. 1, Cowlitz County, Post Office Building, Kelso, Washington. Re: John Fannon, Order #2253, under date of February 17, 1945. Gentlemen: Since making my last report to you of my illness under date of November 1, 1944, I have been released from the hospital and have been receiving out-patient treatment: however, upon the advice of the doctor I am going to attend and

(Testimony of Ruth V. Anderson.)

go through the clinic at Portland, Oregon. On my way en route thereto I will endeavor to report in to your Board in person. At the time of my release from the hospital I was placed under arrest for violation of the Selective Service Act in not reporting for induction at the time I was in the hospital, and have been bound over to the Grand Jury. My marital status has changed since my last report in that I was divorced and then remarried. Very truly yours, signed by John Fannon."

Witness continuing: That letter does not clear the delinquency. It is merely a statement from the registrant that he would report to us. He had already been reported to the District Attorney and it is out of our hands. After that letter was written he has not to my knowledge contacted our draft board at Kelso, Washington. We have a letter from Mr. Drager, attorney, as of November 1, regarding registrant's being confined in the hospital, but no request for a postponement just a statement of fact. There is no record of any [41] postponement on induction of Mr. Fannon in relation to that order to report for induction on October 30, 1944. There was never a postponement. There was never a request or application made for postponement of induction. The file does not reflect any such request.

The Court: Mr. Plummer, looking at it (Plaintiff's Exhibit No. 1) from the exterior, it seems that is quite a voluminous file, and I do not know that all of it really is relevant to any facts which

(Testimony of Ruth V. Anderson.)

will go to the jury in this case; and therefore it may be considered proper not to send the exhibit to the jury as a whole, so if there are any part or parts of it which you think are material, I suggest that the attention of the witness be directed to them now, and such parts read to the jury or identified, so we will know what parts will go. Otherwise it will be like hunting a needle in a haystack unless it has heretofore been called to the attention of the jury.

Mr. Plummer: I think the entire file has a bearing on the motive or intent which will have to be shown in this case, your Honor.

The Court: I am not making any ruling on it now. You are content to leave it as it is?

Mr. Plummer: Yes. I believe that is all.

The Court: You may cross examine, Mr. Drager.

Mr. Drager: If the Court please, I believe if there are any particular items Mr. Plummer wanted brought to the attention of the jury it would be simple enough to have him ask for them. It is a broad proposition to submit the entire file. I haven't had an opportunity to examine it to see whether there are things prejudicial.

The Court: I would like to look at it first. You may take it in just a moment. [42]

Mr. Drager: As I remember the ruling, if counsel desires to introduce such exhibits that they be identified and at that time and place they are read to the jury.

The Court: Your recollection is correct, except

(Testimony of Ruth V. Anderson.)

there is another clause to the rule. The rule is that they may be read while the witness is on the stand; otherwise they may not be read. But there is no inhibition against sending them to the jury even though they are not read to the jury.

Mr. Drager: I would like to ask the witness a question. I believe you stated, Mrs. Anderson, that Mr. Fannon registered originally with the Kelso Board?

A. That is right.

Mr. Drager: Didn't he, as a matter of fact, register originally at Missoula, Montana, or do you know?

A. That I couldn't say without seeing his registration card. If he did, he must have given an address within Cowlitz County that would automatically send his card to our board.

Mr. Drager: If the Court please, I have no particular objection except to one or two matters in there; for example, there is an anonymous letter to the draft board, unsigned, and there are other things there I believe should be excluded, and I would be very glad to stipulate with Mr. Plummer if we could extract one or two things from the file I would stipulate the rest of those things could be admitted.

The Court: The exhibit is already admitted. The question is how much shall go to the jury on the final conclusion of the case. An anonymous letter ought not to be considered for any purpose. It is totally irrelevant, no matter what the charges contained may be. I think since it has already

(Testimony of Ruth V. Anderson.)

been admitted you had better proceed with your cross examination and before the case goes to the jury you can invite the attention of the Court to any matters you think ought not to be permitted to go to the jury. [43]

Mr. Drager: I believe some of them are totally irrelevant and totally inadmissible.

The Court: The Court will pass upon it at the time. You may proceed with cross examination.

Cross Examination

By Karl A. Drager, Attorney for Defendant:

I live in Kelso, Washington, I have been employed as assistant clerk of the draft board there about three years. There is a Lila M. Mickens employed there at Local Board No. 1, at Kelso, Washington in the capacity of clerical assistant; there was a Genevieve Loose employed there for a short while. She is not there now, but she has been.

There was a Mary Frances Gunn employed there for a short while. I have been there during all that time. I came up by plane from Seattle, by way of Fairbanks; had a nice trip. The letter I testified I had received from Mr. Drager is as follows: "Drager Law Offices, Anchorage, Alaska, November 1, 1944. Addressed to Local Board No. 1, Cowlitz County, Post Office Building, Kelso, Washington. Re: John Fannon, Order #2253. Gentlemen: On behalf of John Fannon, who was ordered to

(Testimony of Ruth V. Anderson.)

report to the Local Board, Anchorage, October 30, for induction, you are informed that Mr. Fannon has been under the doctor's care and on or about October 28, 1944, was hospitalized at the Palmer Hospital, Palmer, Alaska, for a major operation. At the present time he is in the hospital convalescing from the operation. This information was given to the Local Board, Anchorage, but at the request of Mr. Fannon, I am forwarding it to you also. This communication is not for the purpose of change of address as no change of address is necessary. Palmer, Alaska, is adjacent to Anchorage, Alaska, and proper provisions have been made for forwarding and contacting. Very truly yours, John Fannon, by Karl A. Drager, Attorney." [44]

Witness continuing: I have a letter in the file here under date of August 20, 1943, from John Fannon. (Witness reads letter) as follows: "Anchorage, Alaska, August 20, 1943. Local Board No. 1, Cowlitz County, Post Office Building, Kelso, Washington. Gentlemen: Re: John Fannon—Order No. 2253. This is to inform you that recently I was inducted into the army at Anchorage, Alaska, and was discharged by reason of rejection on the seventeenth of August, 1943. At the time of rejection and discharge I was informed by the army officials that they would notify you of this action. However, I desire to inform you personally so that there will be no mistake. I have recently made application and have been accepted for employment on a defense project in the near vicinity of Anchor-

(Testimony of Ruth V. Anderson.)

age, Alaska. For that reason I desire to be transferred to the Anchorage local draft board and herewith make request that such transfer be made. Will you kindly inform me as to action taken in this matter. My address is c/o Karl A. Drager, attorney at law, Box No. 484, Anchorage, Alaska. Yours very truly, and it is signed, John Fannon."

Witness continuing: I have a letter in our file under date of September 24, 1943, (witness reads letter) as follows: "Care of Karl A. Drager, Attorney at Law, Post Office Box 484, Anchorage, Alaska, September 24, 1943. Local Board No. 1, Cowlitz County, Post Office Building, Kelso, Washington. Gentlemen: Re Order No. 2253. On August 20, 1943, I wrote you advising you that I had been inducted and discharged and requesting transfer to Anchorage local board, giving my address care of Karl A. Drager, Attorney at Law, Box 484, Anchorage, Alaska. I have since received under date of August 27, 1943, a letter from your Board informing me that a registrant is at all times under his own board and transfer is permitted only for medical examination or induction and that I am to keep you informed at all times of my [45] address and occupational status. I cannot be certain that this letter of August 27 is in reply to my letter of August 20th for the reason that it wasn't addressed to the address given by me in my letter. It was addressed only Anchorage, Alaska. In this connection I desire to invite your attention that I have yet to receive the original orders for induction

(Testimony of Ruth V. Anderson.)

which were supposedly mailed to me by your Board, and by reason of that failure to receive the induction papers I was placed under arrest for failure to report for induction, which caused me not only humiliation but considerable expense and inconvenience. Inasmuch as I have no desire to undergo any similar experience on account of failure to obtain delivery of mail from your Board, I have given you an address which will place my mail in care of my attorney who has a post office box, which are very difficult to obtain here. In this way I can be certain of being notified; provided, you do place the proper address on the envelope. At the present time I am employed as a plumber's helper on a local project. Yours very truly, John Fannon."

The Court: What is the date of that?

A. September 24, 1943.

Examination continued by Mr. Drager:

Witness is handed a letter by Mr. Drager and identifies it as a letter written in the office of the Cowlitz County Local Board. The letter is offered and admitted in evidence and marked "Defendant's Exhibit A".

Witness continuing: There is a copy of the letter in the file. (Witness reads letter) as follows: "Addressed to John Fannon, Anchorage, Alaska, regarding Order No. 2253, under date of August 27, 1943. Dear Sir: This is to advise that under Selective Service Regulations a registrant is under his board of registration at all times and transfer

(Testimony of Ruth V. Anderson.)

to another board is permitted only for medical examination or induction. It is therefore important that you keep this board informed [46] at all times of your present address and occupational status. Yours truly, Cowlitz County Local Board, Walter J. Vitous, Chairman, by Avis Benson, Clerk."

Witness continuing: When I said that Mr. Fannon had been transferred to the Anchorage Board, I meant for the purpose of induction only. The jurisdiction of the registrant remains in our Board. Yes, there are other letters, written matter, in the file regarding Fannon's case. Mr. Fannon did not to my knowledge report to the Board in person this spring. It is not of record in the file whether his father came there or not. I understood that his father contacted a member of the Board, but I don't know of anything that took place.

He was ordered for induction at one time at Anchorage. He was ordered to report for induction on August 17, 1943—ordered to report for physical examination and was rejected. Later he was classified to 1-A and ordered to report for physical examination. He reported August 25, 1944 and was accepted for military service. Yes, he reported and the records show he was examined on that date. After that reporting he was placed on call from the original board, credited to his original local board.

Q. In other words, if you had a call for 10 down there in Kelso and they had a call for 10 up

(Testimony of Ruth V. Anderson.)

here, if Mr. Fannon reported up here they would really send 11 and you would send 9?

A. That is right. We would place him on the induction list in our own board, then he would be transferred to this board and sent in addition to the number required from the board here.

Witness continuing: We get credit for it down there. We have a regular procedure of reporting delinquents in the [47] event of non-reporting. The cases of delinquents in reporting are rather rare. In the event we do have a report of a delinquent in reporting, whether or not we sometimes set them aside and have them come up for future induction, depends entirely upon the circumstances of the case. Generally a man is reported to the district attorney immediately when he fails to report for induction. The regulations say promptly. The regulations use the word promptly. That is under section 642.21. The board has discretion in the matter within a reasonable extent. However regulations state he should be reported promptly on failure to report. He is considered delinquent when he fails to report immediately. But it is still in the board's hands until it is reported to the district attorney. The board would have the power to make a stay in the induction but there would have to be some reason and a special request. That is in the discretion of the board and the state director, the latter being a sort of ex-officio officer with the board in matters of that kind, as regards approval.

Q. I would like to hand the witness these and

(Testimony of Ruth V. Anderson.)

see if she can tell what they are. You may be able to identify them by the signatures.

A. Return to John Fannon—

Q. I meant by the signatures of the clerk of your board.

A. Mary Frances Gunn. She was a clerical assistant of the local board No. 1 at Kelso for about two months.

Q. You are familiar with that form?

A. Yes. It is used by the Post Office for receipt of registered mail.

Q. It is addressed to your board is it?

A. Yes.

Q. Returned from your board? A. Yes.

Documents were then offered and admitted in evidence, and marked "Defendant's Exhibits B-1, B-2, B-3," and read to the jury, as follows: "One of these is dated October 12, 1943. Return to John Fannon, Box 484. Registered article No. 2842. It was received by the Local Board #1, Kelso, Washington, signed by Lila M. Mickens. Date of delivery October 2, 1943. Another one of the same type dated May 22, 1944, the Kelso postmark date. Registered article 10003, return to John Fannon. Signed by Geneva Leabo for Selective Service Board. Another card, same form, return to John Fannon, Box 484, care of Karl A. Drager, registered article 6956m dated February 20, 1945, and received by Local Board No. 1 by Frances Gunn. Date of delivery February 20, 1945."

(Testimony of Ruth V. Anderson.)

Q. You recognize all of those signatures as members of your official body down there.

A. That is right.

Witness continuing: I have resided in Kelso four years. I am not acquainted with Mrs. J. W. Ward there nor any of the Fannon family. I don't know whether Mrs. Ward is a sister of John Fannon. Kelso is a city of about seven thousand. They tell me Anchorage is about twelve thousand. In my official capacity I seldom attend any meetings of the Selective Service Board. The clerk attends the meetings generally. The clerk's name is Mrs. Avis Benson.

Q. You wouldn't be in a position to know, or would you, whether there was any special prejudice against this defendant by the board?

Mr. Plummer: I object to that question.

The Court: Objection sustained. The question of prejudice can't enter into this. Exception allowed.

Witness continuing: According to the regulations, the registrant is reported delinquent by the board to which [49] he is transferred for induction. Then the action would be taken by the board of transfer.

Re-Direct Examination

By Mr. Plummer:

Referring to Form D.S.S. 281, dated June 14, 1943, that is an official form of the department, Selective Service Form 281. This was the form that was mailed to the registrant.

(Testimony of Ruth V. Anderson.)

(Witness reads paper) as follows: "June 14, 1943, to John Fannon, Order No. 2253, addressed to Lansing Hotel, Tacoma, Washington. The printed form is as follows: Dear Sir: According to information in possession of this local board, you have failed to perform the duty, or duties, imposed upon you under the selective service law as specified below."——

Mr. Drager: I object on the ground that it is irrelevant and immaterial. It is too remote.

Mr. Plummer: You have availed yourself of letters dating back to August and September of 1943. I think the relevancy of this form is no more remote than these letters read in the previous examination by Mr. Drager.

Mr. Drager: I would like to know the purpose of it. I have a purpose in referring to the others. I can't see the purpose of this except to prejudice.

Mr. Plummer: May I state the purpose?

The Court: Yes.

Mr. Plummer: My purpose in having that read is that there are several other such forms in the file here, and it is my contention that the present charge is one of a series of events which are a part of a general scheme to evade the [50] selective service law and I think that all delinquencies similar to the ones charged in this indictment are relevant to show it is part of a scheme to evade the selective service law.

The Court: I am not sure of that and the defendant hasn't been indicted for that; however the

(Testimony of Ruth V. Anderson.)

subject has already been opened up by part of an exhibit that was read at the instance of counsel for the defendant in a letter written by the defendant in which he referred to embarrassment he suffered by reason of failure to receive notice to report for induction and some legal action. This is part of the same subject and the subject is already before the jury. I shall admit it. Objection overruled and exception allowed. You may read it.

A. Commencing where I left off, the Notice of Delinquency. Failure to report for induction. You are therefore directed to report, by mail, telegraph, or in person, at your own expense, to this local board, on or before 9:00 P. M., on the 19th day of June, 1943. Failure to report on or before the day and hour mentioned is an offense punishable by fine or imprisonment, or both.

Witness Continuing: That is the form in its entirety except for the instructions on how to make it out.

Mr. Plummer: Will the bailiff show it to Mr. Drager, please?

The Court: Why not mark the place Mr. Drager, and let counsel finish his redirect examination and you may refer to it on recross examination.

Q. That is the one of June 14, 1943 you have just read? A. Yes, sir.

Q. Will you turn to D. S. S. Form 281 dated April 10, 1943, and read that to the court and jury, please? [51]

Mr. Drager: Same objection.

(Testimony of Ruth V. Anderson.)

The Court: Same ruling. Objection overruled and exception allowed.

A. Notice of delinquency. April 10, 1943, to John Fannon, Order No. 2253, Lansing Hotel, Tacoma, Washington. The same form. Dear Sir: According to information in possession of this Local Board, you have failed to perform the duty, or duties, imposed upon you under the selective service law as specified below. Failure to report for physical examination. You are therefore directed to report, by mail, telegraph, or in person, at your own expense, to this Local Board, on or before 5:00 p. m., on the 15th day of April, 1943. Failure to report on or before the day and hour specified is an offense punishable by fine or imprisonment, or both. Clerk of Local Board.

Q. Will you turn to D. S. S. Form 281 dated June 6, 1942, and read that to the court and jury, please.

A. Notice of Delinquency. To John Fannon, Order No. 2253. Dear Sir: According to information in possession of this Local Board, you have failed to perform the duty, or duties, imposed upon you under the selective service law as specified below. To submit change of address. You are therefore directed to report, by mail, telegraph, or in person, at your own expense, to this Local Board, on or before 5:00 p. m., on the 11th day of June, 1942. Failure to report on or before the day and hour specified is an offense punishable by fine or imprisonment, or both.

(Testimony of Ruth V. Anderson.)

Q. Will you turn to D. S. S. Form 550 dated November 10, 1944, and read that please?

A. This form is a copy of the form Delinquent Registrant Report as made out by Local Board No. 1 at Anchorage, [52] Selective Service System Delinquent Report. To: Honorable Noel K. Wennblom, United States Attorney. Identification of delinquent: John Fannon, Registrant Local Board No. 1, Kelso, Washington, transferred to Local Board No. 1, Anchorage, Alaska. Order No. 2253. Selective Service Classification 1-A. Offenses. First is Social Security No. blank. Offenses: This delinquent failed to report for induction into the armed forces or for assignment to work of national importance pursuant to: check applicable box. In this case, Order to Report for Induction got 150 was checked. The order indicated was mailed on 18 October, 1944, to this delinquent at care of Karl Krager, Box 484, Anchorage, Alaska. In addition to failing to report for induction into the armed forces or for work of national importance as indicated above, this delinquent has also failed to perform the following duties at the times indicated, which is not filled in. Efforts made to locate delinquent. The delinquent has been located by Louise Annabel, Anchorage, Alaska, a Clerk.

The Court: May I intervene there? I didn't understand one line. Did it say that the registrant has been located?

A. Yes, according to the form that I have just

(Testimony of Ruth V. Anderson.)

read, that was sent to the Local Board No. 1 at Kelso by the Local board of Anchorage.

Witness Continuing: They had the authority to report this registrant as delinquent inasimuch as he had failed to appear. That document which appears before me is a letter received from John Fannon on July 31, 1944, in our office of the local board.

(Witness reads letter to court and jury as follows): "July 25, 1944. Dear Sirs: I have just received a card from you putting me in 1-A. I would like to know if I can [53] have enough time before induction to harvest our potato crop and cultivate. We have in 9 acres of potatoes, my partner is an old man and not capable of doing this and help is nearly impossible to obtain. It would work quite a hardship on my wife and child if the crop was a loss as she isn't hardly able to work and take care of a small child. Thanking you I remain, John Fannon, care of Karl Drager."

Witness Continuing: The letter was answered by another letter, copy of which is in the file. It was not considered as a deferment request. A farm deferment has to be recommended by the United States Department of Agriculture. According to his (Fannon's) classifications, he was at one time deferred to the Maritime Service, but that was back in November of 1942. Subsequent to that time I don't believe we had any definite information as to where Mr. Fannon was working. A record is kept of where he is employed or what his occupation is if the information is received. A

(Testimony of Ruth V. Anderson.)

deferred classification would only be given in case a regular form should be submitted by the employer.

Recross Examination

By Mr. Drager:

Q. That isn't a request for reclassification, that letter? A. No.

Q. It doesn't ask for reclassification? It asks for a little time before induction?

A. Yes, sir.

Witness Continuing: Subsequent to that time the records show he was examined physically. He was examined on August 25, 1944. The letter was written on July 25th. The fact that July 25th coincides with the order for reporting for physical examination would be a coincidence, it would have nothing to do with it. [54]

Q. These forms of Notice of Delinquency, those were subsequently cured by some action, were they not? A. They were cleared up eventually.

Q. You don't have any form in there of notice of Delinquency sent to Mr. Fannon since October 30th, do you?

A. That procedure has been changed. The regulations do not provide for notice of delinquency to be mailed to the registrant any longer. The regulations now provide that we submit form 550 to the district attorney promptly and that is a report of the delinquency. It is out of the hands of

(Testimony of Ruth V. Anderson.)

the local board after the form is mailed to the district attorney.

Q. You lose jurisdiction?

A. It is up to the district attorney.

LOUISE ANNABEL,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination

Witness: My name is Louise Annabel. I reside in Anchorage. I am a clerk for the Selective Service Board, No. 1 of Anchorage, Alaska. I have been so employed for nearly two years in the capacity of clerk. As part of my duties as clerk of Board No. One at Anchorage, Alaska, I have the care and custody and control of records of that board. The object you are showing me is the office file of registrant John Fannon. It reflects his order number 2253. It reflects the address where mail, if addressed to that address, would always reach him. The address is care of Karl Drager, Box 484, Anchorage, Alaska. Mr. Fannon, according to the exhibits from the file, is not an original registrant with our Board but was transferred from Local Board No. One of Kelso, Washington. The paper you show [55] me is Transfer, Preinduction Physical Examination for John Fannon.

(Paper admitted in evidence and marked "Plaintiff's Exhibit No. 2.")

(Testimony of Louise Annabel.)

Witness continuing: The paper you ask me to inspect is Order to Report for Preinduction Physical Examination, directed to John Fannon. That is a part of the record of Local Draft Board No. One at Anchorage, Alaska.

(Paper admitted in evidence and marked "Plaintiff's Exhibit No. 3.")

Witness continuing: The paper you have handed me is Selective Service Form, Report of Physical Examination and Induction of John Fannon, Registrant. That is one of the records of Selective Service Board No. One at Anchorage, Alaska. It originated with the Kelso board but presently is in the custody of Local Board No. One at Anchorage, Alaska. Mr. Fannon was examined August 25, 1944. The paper reflects that he was examined by Sidney Leshner, Captain, Medical Corps. It shows that the examination was made, APO 942, United States Army.

(Paper offered in evidence and objection to its admissibility temporarily sustained.)

Witness continuing: The paper I have now inspected is Certificate of Fitness for John Fannon. It is dated August 25, 1944. It is the record of Local Draft Board No. One at Anchorage, Alaska. I have the custody and control of that record.

(Certificate offered and admitted in evidence and marked "Plaintiff's Exhibit No. 4.")

Witness continuing, examined by Mr. Drager: That certificate would be the result, would issue

(Testimony of Louise Annabel.)

as the result of [56] that report for physical examination, that is, the certificate that the physician gives to the Board after making an examination of the man, and filling in that report.

By Mr. Plummer:

The paper now handed me is Order to Report for Induction, addressed to John Fannon. The date of mailing is September 26, 1944. The Order was sent by Local Board No. One, Kelso, Washington. That record is in the custody and control of Local Board No. One at Anchorage, Alaska.

(Paper admitted in evidence and marked "Plaintiff's Exhibit No. 5.")

Witness continuing: The paper now handed me is DSS Form 154, Request for Transfer for Delivery. It requests transfer of registrant, John Fannon. It is dated as having been sent on September 27, 1944. It is a record which is in the custody and control of Local Draft Board No. One at Anchorage, Alaska. It originated with the Kelso Board and was sent to the Anchorage Board through the Territorial Director.

(Paper admitted in evidence and marked "Plaintiff's Exhibit No. 6.")

Witness continuing: The paper now handed me purports to be DSS Form 150, Order to Report for Induction, addressed to John Fannon. It is dated October 18, 1944. It is in the custody and

(Testimony of Louise Annabel.)

control of Local Draft Board No. One at Anchorage, Alaska.

(Paper admitted in evidence and marked "Plaintiff's Exhibit No. 7," and read by the witness to the jury as follows:)

"Prepare in duplicate. Date of mailing, October 18, 1944. Seal is of the Selective Service System and the Local Board Stamp, No. One of Anchorage, is dated October 18, 1944. Order to Report for Induction. The [57] President of the United States, to John Fannon, Order No. 2253, Greeting: Having submitted yourself to a local board composed of your neighbors for the purpose of determining your availability for training and service in the land or naval forces of the United States, you are hereby notified that you have been selected for training and service therein. You will, therefore, report to the local board named above at Room 128 Federal Building, Anchorage, Alaska, at 8:00 A.M., on the 30th day of October, 1944. This local board will furnish transportation to an induction station. You will there be examined, and, if accepted for training and service, you will then be inducted into the land or naval forces. Persons reporting to the induction station in some instances may be rejected for physical or other reasons. It is well to keep this in mind in arranging your affairs, to prevent any undue hardship if you are rejected at the induction station. If you are employed, you should advise your employer of this notice and of the possibility that you may not be

(Testimony of Louise Annabel.)

accepted at the induction station. Your employer can then be prepared to replace you if you are accepted, or to continue your employment if you are rejected. Willful failure to report promptly to this local board at the hour and on the day named in this notice is a violation of the Selective Training and Service Act of 1940, as amended, and subjects the violator to fine and imprisonment. If you are so far removed from your own local board that reporting in compliance with this order will be a serious hardship and you desire to report to a local board in the area of which you are now located, go immediately to that local board and make written request for transfer of your [58] delivery for induction, taking this order with you. Signed by M. E. S. Brunelle, Member of clerk of the local board."

Witness continuing: The exhibit I have before me (Being exhibit just read) was sent by registered mail. A return receipt was requested. I have that return receipt before me.

(It is stipulated by Mr. Drager, counsel for defendant, that the letter in question was received by the addressee and that the date of the receipt was October 19, 1944.)

Witness continuing: The file handed me I have identified as the file of Local Draft Board No. One of Anchorage, Alaska, for registrant John Fannon. The file reflects that in respect to that order to report for induction he failed to report for induction on the 30th of October, 1944. The paper handed

(Testimony of Louise Annabel.)

to me is DSS Form 550. It is dated October 30, 1944. That form is Selective Service System Delinquent Registrant Report concerning registrant John Fannon. It is addressed to the Honorable Noel K. Wennblom, United States Attorney.

(Paper admitted in evidence and marked "Plaintiff's Exhibit No. 8.")

Q. Will you refer to the file of Selective Service Board No. 1. Local Board No. 1 of Anchorage, Alaska, and by referring to your file are you able to state whether or not the defendant, Mr. Fannon, ever made application or request for postponement of induction in connection with this Order to Report for Induction on the 30th of October, 1944?

A. No, sir.

Witness continuing: Referring to our files of Local Draft Board No. 1 of Anchorage, Alaska, no one else ever made [59] application or request for postponement of Mr. Fannon's induction, a request in his behalf in regard to the Order to Report for Induction on October 30, 1944. Again referring to the file, I can state that the induction of John Fannon was never postponed by Local Draft Board No. 1 of Anchorage, Alaska. Mr. Fannon has not, to my knowledge, since contacted our office; he has not, to my knowledge, contacted Local Draft Board No. 1 at Anchorage, Alaska, at any time since October 30, 1944.

(Testimony of Louise Annabel.)

Cross Examination

By Mr. Drager:

(Witness handed plaintiff's Exhibit No. 8 and reads same to the jury as follows:)

"Selective Service System Delinquent Registrant Report, Anchorage Local Draft Board No. 1 stamp dated October 30, 1944, date of mailing October 30, 1944. To Honorable Noel K. Wennblom, United States Attorney. 1. Identification of Delinquent: John Fannon Registrant Local Board No. 1, Kelso, Washington, Transferred to Local Board No. 1, Anchorage, Alaska, for induction, care of Karl Drager, Box 484, Anchorage, Alaska. Order Number 2253, Selective Service Classification 1-A. 2. Offenses. This delinquent failed to report for induction into the armed forces or for assignment to work of national importance pursuant to: and in parentheses, check applicable box. Order to Report for Induction form 150, was checked. Two other checks that could be made were: Order for Transferred Man to Report for Induction form 156 and Order to Report for Work of National Importance, form 50. The order indicated was mailed on 18 October, 1944, to this delinquent at care of Karl Drager, Box 484, Anchorage, Alaska. In addition to failing to report for induction into the armed forces or for work of national importance [60] as indicated above, this delinquent has also failed to perform the following duties at the times indicated. (The spaces following are

(Testimony of Louise Annabel.)

left blank.) 3. Efforts made to locate delinquent: The delinquent has been located by Louise Annabel, Anchorage, Alaska, a clerk, Local Board 1 on 30 October at Palmer, Alaska.

The Court: Is that all you wish read?

Mr. Drager: I am going to have her refer to it, if the Court please. Is there some more?

A. The other side.

Q. Read that, please.

A. The following persons may know the whereabouts of the delinquent: (I am reading parts filled in by our office) Karl Drager, Attorney, Box 484, Anchorage, Alaska, Oscar Olson, U. S. Deputy Marshal, Anchorage, Alaska. Documents as indicated are transmitted with original of this report: Order to Report for Induction, Form 150 (that is the only one that is checked. The others are left blank.")

Witness continuing: That is all that is filled in by this office. It is signed by me. As a matter of fact, this is a copy. My signature is on there, but it is a copy. The original went to the District Attorney's office. It is addressed to Mr. Wennblom, United States Attorney, and this is a copy we hold in our files. It states, referring to the section numbered "3" at the bottom of the first page, that the delinquent has been located at Palmer, Alaska. The paragraph I read on the reverse side states that the following persons may know the whereabouts of the delinquent. Listed under that paragraph is Oscar Olson, United States Deputy Mar-

(Testimony of Louise Annabel.)

shal. The date on which he was to have reported was on the 30th of October at 8:00 o'clock A. M. The date of this is October 30, 1944. I remember having a phone call from you (Mr. Drager) in reference [61] to Mr. Fannon's failure to report. I remember that at the time you called and reported to me that he was in the hospital at Palmer, that I replied to you that we already knew that. I made a report of this delinquent to the Kelso board. The regulations provide that we Local Board No. 1 of Anchorage make the report of delinquency to the district attorney. This DSS Form 550 I have just read is the report we made. My understanding is that immediately this report goes to the district attorney, we then lose jurisdiction of the registrant, that the matter is in the hands of the district attorney, and is out of our hands. There is no recommendation as to procedure from our office, as to what should be done, to the district attorney's office. We knew that Mr. Fannon was in the hospital at Palmer from communicating with the hospital at Palmer and they verified it. The doctor said he was ill, that there was something the matter with him, but as yet he hadn't determined what the trouble was. He hadn't operated at that time on the defendant here. I talked to the doctor personally. I did not have any communication with a colonel of the Medical Corps at the Fort in connection with Mr. Fannon about that time in connection with his illness or his failure to report. I talked to I believe it was a Captain Leshner. He is a medical officer.

(Testimony of Louise Annabel.)

There was a conversation on the subject of his (Fannon's) being ill and in the hospital. The information came from me. I do not know if he made any investigation at all.

Redirect Examination

By Mr. Plummer:

(File handed to the witness.)

Witness continuing: I have before me what purports to be a memorandum of a telephone conversation which I had with doctor—Captain Leshner on October 30, 1944. Captain [62] Leshner told me that inasmuch as the registrant John Fannon was an inductee, he could be removed, or rather he would be accepted at Fort Richardson and held there under observation for the determining of his condition.

Recross Examination

By Mr. Badger:

I did not communicate that information to Mr. Fannon or to any of his representatives.

M. E. S. BRUNELLE

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Plummer:

My name is M. E. S. Brunelle. I am the Clerk of the District Court for the Third Division, Territory of Alaska. The document which is handed me is the original transcript of the proceedings in the United States Commissioner's Court here at Anchorage.

(It is stipulated by the parties that the preliminary hearing, which resulted in the defendant's being held over to the grand jury, which resulted in the indictment in this case, was held in the United States Commissioner's Court at Anchorage on the 16th of January, 1945.)

Mr. Drager: If the Court please, I have a witness, a doctor, I didn't wish to bring in here and wait. It would only take a few minutes to get him.

The Court: He might like to testify and be excused. How long will it take to put on the doctor's testimony?

Mr. Drager: I don't have him here but he would be available in a few minutes, unless you would like to adjourn.

The Court: I haven't any particular desire to do anything except speed up the trial. [63]

Mr. Drager: I will call Mr. Plummer.

Whereupon the plaintiff, the United States, rested its case, and thereupon

RAYMOND E. PLUMMER,

a witness called on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Drager:

My name is Raymond E. Plummer. I am Assistant District Attorney for the Third Division of Alaska. Mr. Wennblom is District Attorney. I believe that Mr. Wennblom was in the office on October 30, 1944. As I recall, this matter was referred to Mr. Wennblom at that time. I finally signed the complaint. As I recall it, the matter was referred to Mr. Wennblom and there was some discussion as to whether or not action would be taken at that time. As I remember, he stated that the matter would be held in abeyance until Mr. Fannon got out of the hospital to see whether or not he reported at that time to the draft board. I don't believe the regulations provide for any effort being made to contact Mr. Fannon or any of his representatives on order to show cause or anything of that kind. There wasn't anything done to my knowledge in the way of contacting him.

Mr. Drager: The defense rests.

The Court: You spoke of another witness?

Mr. Drager: I am unable to obtain him, if the Court please, and I didn't have a subpoena issued. He is a very busy man. I believe the matter for

which I wished to call him was covered to some considerable extent already.

The Court: Very well. [64]

Mr. Plummer: If the Court please, and if it is agreeable with the members of the jury and counsel for the defense, I would prefer to wait, to set it over until morning; however, I will abide by the Court's rule.

Mr. Drager: If the Court please, if the hearing is to go over to the morning, I would like to reserve the right to call Dr. McKenzie.

The Court: Very well. Court will now adjourn and the trial will be continued until tomorrow morning at 10:00 o'clock.

At 10:00 o'clock a. m., the following day, April 10, 1945, court was convened and the following proceedings were had:

Mr. Drager: If the Court please, I will not call the other witness.

The defense rests.

Whereupon both plaintiff and defendant having rested and the case having been argued by respective counsel, the court instructed the jury as follows:

“INSTRUCTIONS TO THE JURY

“Ladies and Gentlemen of the Jury:

“It now becomes the duty of the Court to instruct you as to the law that will govern you in your deliberations and disposition of this case.

When you were accepted as jurors in this case you obligated yourselves, by your oath, to try well and truly the matters at issue between the Government of the United States and the defendant in this case, and a true verdict render according to the law and the evidence as given you on the trial. That oath means that you are not to be swayed by passion, sympathy or prejudice, but that your verdict should be a careful consideration of all the evidence in the case. It is equally your duty to accept and follow the law as given to you in the instructions of the Court, even [65] though you may think that the law should be otherwise. But it is the exclusive province of the jury to declare the facts in the case, and your decision in that respect, as embodied in the verdict, when arrived at in a regular and legal manner, is final and conclusive upon the Court. Therefore, probably the greater ultimate responsibility in the trial of the case rests upon you, because you are the triers of the facts.

“John Fannon, the defendant in this case, is accused by the Grand Jury of this Division of violation of the Selective Training and Service Act of 1940, as amended, in that he wilfully, feloniously, knowingly and unlawfully failed and neglected to report at Fort Richardson, Alaska for induction.

“You will have the indictment with you in the jury room and may examine the same in detail.

“This indictment is a mere allegation of the charge against the defendant and is not in itself any evidence of guilt, and no juror should permit himself or herself to be influenced against the de-

fendant because an indictment has been rendered against him.

“To this indictment the defendant has pleaded not guilty, which plea is a denial of the charge, and puts in issue every material allegation of the indictment.

“It therefore becomes the duty, and it is incumbent upon the Government to prove every material element of the charge contained in the indictment to your satisfaction beyond a reasonable doubt.

“I instruct you that the essential elements which the Government must prove of the charge charged in the indictment are: [66]

“First: That the said violation occurred within the jurisdiction of this court;

“Second: That said violation occurred on or about the 30th day of October, 1944, or within three years before the finding of the indictment herein.

“Third: That the defendant failed and neglected to report for induction, as set forth in the indictment;

“Fourth: That the defendant did so wilfully, knowingly, feloniously and unlawfully.

“If the Government has proved each and all of these essential elements to your satisfaction, beyond a reasonable doubt, you will find the defendant guilty as charged in the indictment; if not, you should acquit him.

“I instruct you that:

“The word ‘wilfully’ means intentionally and not accidentally.

“The word ‘feloniously’ means purposely and unlawfully.

“The word ‘unlawfully’ means illegally or wrongfully.

“The word ‘knowingly’ needs no definition; it defines itself.

“You will observe that the indictment charges the defendant to have committed the crime set out in the indictment ‘wilfully’ and ‘knowingly’. These words are to be given full force and effect by you because they are a material part of the indictment. If one does a thing wilfully and knowingly, he does it not only with knowledge and understanding of what he is doing, but also intentionally; and one who commits a criminal act wilfully and knowingly understands and knows the nature of the crime he is committing and he commits it with criminal intent. An accidental or inadvertent violation of the law can be done neither knowingly nor wilfully. [67]

“So, in this case, to warrant conviction, it is necessary for you to find beyond a reasonable doubt that the defendant failed and neglected to report for induction, as set out in the indictment and under the circumstances therein stated, and that he so failed and neglected with knowledge and understanding of the nature of his act and with criminal intent to avoid compliance with the law concerning such induction.

“A reasonable doubt is a doubt which is reasonable in view of all of the evidence, and such as arises upon an impartial comparison and consideration of all of it, or from lack of evidence, and pre-

vents the jury from being able candidly and truthfully to say that they have an abiding conviction of the defendant's guilt.

“The very use of the word ‘reasonable’ in the term ‘reasonable doubt’ indicates that by a reasonable doubt is not meant any vague, formless, or imaginary doubt or conjecture which may come into your minds, or which may be created out of sympathy for the accused or another, or out of kindness of heart.

“A reasonable doubt must be a substantial doubt, such as an honest, sensible, fairminded person, animated by a conscientious desire to ascertain the truth, may with reason entertain.

“If, after examining carefully all the facts and circumstances in the case, in the light of the law as stated by the Court, you have a settled and abiding conviction of the guilt of the defendant, then you are satisfied of guilt beyond a reasonable doubt; but if you do not have such a conviction of the defendant's guilt, then you should acquit.

“The law presumes every person charged with crime to be innocent. [68]

“This presumption of innocence remains with the defendant throughout the trial and should be given effect by you unless and until, by the evidence introduced before you, you are convinced the defendant is guilty beyond a reasonable doubt.

“This rule, as to the presumption of innocence, is a humane provision of the law, intended to guard against the conviction of an innocent person, but it is not intended to prevent the conviction of any

person who is in fact guilty, or to aid the guilty to escape punishment.

“The laws of Alaska provide that all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, are to be decided by the Court, and all discussions of law addressed to the Court; and although the jury have the power to find a general verdict, which includes questions of law as well as fact, you are not to attempt to correct by your verdict what you believe to be errors of law upon the part of the Court.

“All questions of fact, other than those heretofore mentioned in these instructions, must be decided by the jury, and all evidence thereon addressed to them. Since the law places upon the Court the duty of deciding what testimony may be admitted in the trial of the case, you should not consider any testimony that may have been offered and rejected by the Court, or admitted and thereafter stricken out by the Court.

“You are the sole judges of the credibility of the witnesses. In determining the credit you will give to a witness and the weight and value you will attach to his testimony, you should take into account the conduct and appearance of the witness upon the stand; the interest he has, if any, in [69] the result of the trial; the motive he has in testifying, if any is shown; his relation to and feeling for or against any one of the parties to the case; the probability or improbability of the statements of

such witness; the opportunity he had to observe and be informed as to matters respecting which he gave evidence before you; and the inclination he evinced, in your judgment, to speak the truth or otherwise as to matters within his knowledge.

“You are instructed that under the laws of Alaska, the accused shall, at his own request but not otherwise, be deemed a competent witness, the credit to be given to his testimony being left solely to the jury under the instructions of the Court, but that his waiver of such right shall not create any presumption against him.

“The law makes you, subject to the limitations of these instructions, the sole judges of the effect and value of evidence addressed to you.

“However, your power of judging the effect of evidence is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence.

“You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds, against the declarations of witnesses fewer in number, or against a presumption or other evidence satisfying your minds.

“A witness wilfully false in one part of his testimony may be distrusted in others.

“Testimony of the oral admissions of a party should be viewed with caution.

“Evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and

of the other [70] to contradict, and, therefore, if the weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence was within the power of the party, the evidence offered should be viewed with distrust.

“The law requires that all twelve jurors must agree upon a verdict before one can be rendered.

“While no juror should yield a sincere conclusion, founded upon the law and the evidence of the case, in order to agree with other jurors, every juror, in considering the case with fellow jurors, should lay aside all undue pride or vanity of personal judgment, and should consider differences of opinion, if any arise, in a spirit of fairness and candor, with an honest desire to get at the truth, and with the view of arriving at a just verdict.

“No juror should hesitate to change the opinion he has entertained or even expressed, if honestly convinced that such opinion is erroneous, even though in so doing he adopts the views and opinions of other jurors. But before a verdict of guilty can be rendered, each of you must be able to say, in answer to your individual conscience, that you have arrived at a settled conviction, based upon the law and the evidence of the case and nothing else, that the defendant is guilty.

“You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and it is not your province to single out one particular instruction and consider it to the exclusion of the other instructions.

“As you have been heretofore instructed, your

duty is to determine the facts from the evidence admitted in the case, and to apply to these facts the law as given to you by the [71] Court in these instructions.

“During the trial I have made no comment on the facts and expressed no opinion in regard thereto. If I have, or if you think I have, it is your duty to disregard that opinion entirely, because the responsibility for the determination of the facts in this case rests upon you, and upon you alone.

“Upon retiring to your jury room you will elect one of your number foreman, who is to speak for you and sign the verdict unanimously agreed upon.

“In conformity with law, I now hand you the instructions which I have just read to you for your guidance, the pleadings, the exhibits, with the exception of a part of plaintiff’s exhibit No. 1 not relevant to any issue in the case now on trial, and form of verdict.

“If you find the defendant guilty as charged in the indictment, you will draw a line in the blank space before the word ‘guilty’ and have your foreman sign the verdict. If you find the defendant not guilty you will write the word ‘not’ in the blank space before the word ‘guilty’ and have your foreman sign the verdict.

“When you have unanimously agreed upon a verdict and your foreman has signed the same, you will return such verdict into court, together with the exhibits, pleadings and these instructions.

“Dated at Anchorage, Alaska, this 10th day of April, 1945.

/s/ ANTHONY J. DIMOND
District Judge” [72]

At the time of instructing the jury as aforesaid the Court refused to give the following instruction requested by the defendant, to-wit:

“A criminal intent, as explained in these instructions, is always necessary to constitute a crime, and when such criminal intention does not appear, from all the facts and circumstances proved on the trial, then the act complained of cannot be deemed a crime. Misadventure or accident, when the circumstances rebut the presumption of criminal intention and of criminal negligence, as explained in these instructions, are not deemed, in law, criminal, however injuriously they may affect persons or property. And, in this case, the matter of intent is an essential element of the offense charged, which the government must prove to the satisfaction of the jury beyond a reasonable doubt, and if the evidence fails to establish, beyond a reasonable doubt, that the defendant was able to report for induction and failed and neglected to do so, with the intent to wilfully evade or avoid induction, it will be the duty of the jury to acquit the defendant.

“In considering the matter of intent, it is competent for the jury to consider all of the facts in connection therewith, including the physical ability of the defendant to report or not to report, his effort or lack of effort to inform his Draft Board

of his whereabouts, and, having considered all of these things, to authorize a conviction, the facts and circumstances must not only all be in harmony with the guilt of the accused, but they must be of such character as to be inconsistent with his innocence and consistent with a wilful intent” to which ruling the defendant excepted and the exception was allowed. [73]

Immediately after the rendition of the instructions as aforesaid and in the presence of the jury and before they retired, the defendant took the following exceptions to the instructions of the Court as set forth in the Memorandum of Exceptions filed herein as follows:

“MEMORANDUM OF EXCEPTIONS

“I object to the failure of the Court to include the instruction on criminal intent, on the grounds that I believe it is necessary to explain, in language more understandable to the lay person, what is meant in law as a matter of intent—criminal intent; that in view of the nature of the evidence and the case at bar it is necessary that a special instruction be given that the jury may have full understanding of criminal intent and the words, knowingly and wilfully, as bearing thereon.

“I object to the instruction offered which commences with the sentence: ‘You will observe that the indictment charges the defendant to have committed the crime set out in the indictment “wilfully and knowingly”. * * *’ in that it does not cover the matter of intent in such language as to

make clear to the jury the proper explanation of criminal intent.

“The foregoing exceptions to instructions were taken in open court by Karl A. Drager, Esq., attorney for defendant, in the presence of the jury and before the jury retired to consider further their verdict.

“The exceptions are allowed and the requested instruction will be filed and marked, Defendant’s Requested Instruction No. 1. The request to give this instruction is refused because it is the Court’s belief that the subject matter is otherwise covered.

“Dated, at Anchorage, Alaska, this 10th day of April, 1945.

/s/ ANTHONY J. DIMOND
District Judge”

And thereafter on the 10th day of April, 1945, the jury returned their verdict in which they found the defendant guilty as charged in the indictment with a recommendation for leniency. [74]

And thereafter on the 14th day of April, 1945, the defendant filed a Motion for New Trial on the grounds of insufficiency of the evidence to justify the verdict, and error in law occurring at the trial and excepted to by the defendant.

And thereafter on the 1st day of May, 1945, by leave of court duly had and obtained, the defendant filed his Amended Motion for New Trial with affidavit of Karl A. Drager, attorney for the defendant, in support thereof, said motion and affidavit being as follows:

“AMENDED MOTION FOR NEW TRIAL

“Comes now the defendant in the above entitled action and moves the Court to set aside and vacate the verdict of the jury in this action, and grant a new trial, for the following reasons:

“1. Insufficiency of the evidence to justify the verdict.

“2. Error in law occurring at the trial and excepted to by the defendant. .

“3. Newly discovered evidence material for the defendant, which he could not with reasonable diligence, have discovered and produced at the trial.

“Dated this 27th day of April, 1945.

“/s/ KARL A. DRAGER

“Attorney for Defendant”

“AFFIDAVIT IN SUPPORT OF AMENDED
MOTION FOR NEW TRIAL

“United States of America,

“Territory of Alaska—ss.

“Comes now Karl A. Drager, Esq., who being first duly sworn, upon oath deposes and says:

“That he is counsel for the defendant, John Fannon, [75] and that he makes this affidavit in support of the Amended Motion for a New Trial, and further states that it was disclosed at the trial that telephonic conversations were had between the physician and surgeon who performed the operation at Palmer, and the Army Officers and local

Draft Board officials, but it was not disclosed, nor was it known to defendant and his counsel, that conversations were had between the physician and surgeon at Palmer, and the Medical Officer, Lt. Col. Albrecht, in charge of inductees at the Army Post. Affiant is informed, and believes, and upon such information and belief alleges, that the hereinbefore mentioned conversations were to the effect that after the preliminary inquiries between the doctors, that defendant's physician inquired if it was desired that the defendant be transferred to a Military Reservation and he was instructed by the Army Medical Officer that it would not be necessary to make the transfer and that he was to continue the treatments at the Palmer Hospital.

"Affiant further states that in view of the circumstances that this evidence is material for the defendant and that a trial without such evidence would be to the prejudice of the defendant.

"/s/ KARL A. DRAGER

"Subscribed and sworn to before me, a Notary Public at Anchorage, Alaska, this 27th day of April, 1945.

"/s/ MARY E. MOMINEE

"Notary Public for Alaska"

And thereafter on the 28th day of May, 1945, the Court denied the said Amended Motion for a New Trial, to which ruling the defendant excepted and the exception was allowed. [76]

And thereafter on the 8th day of June, 1945, the

defendant, by his attorney, George B. Grigsby, filed a Motion for New Trial and affidavit in support thereof, which motion and affidavit were as follows:

“MOTION FOR NEW TRIAL

“Comes now the defendant in the above entitled action and moves the Court that the verdict of the jury heretofore rendered in this action be set aside and a new trial granted upon the following grounds:

“Newly discovered evidence material for the defendant which he could not with reasonable diligence have discovered and produced at the trial.

“This motion is based upon the records and files herein and upon the affidavit of John Fannon, defendant herein, filed herewith.

“/s/ GEORGE B. GRIGSBY

“Attorney for Defendant”

“Service admitted June 8, 1945.

“/s/ RAYMOND E. PLUMMER

“Asst. United States Attorney”

**“AFFIDAVIT IN SUPPORT OF MOTION
FOR NEW TRIAL**

“United States of America,

“Territory of Alaska—ss.

“John Fannon, being first duly sworn, deposes and says:

“That he is the defendant in the above entitled action. That he is charged by the indictment herein of neglecting to perform a duty required of him

under the provisions of the Selective Training and Service Act of 1940, as amended, and the rules and regulations made and directions given thereunder, and in particular with having, after being ordered by Local Selective Service Board No. 1, of Anchorage, Alaska, [77] to report for induction at Fort Richardson, Alaska, on the 30th day of October, 1944, failed so to do.

“That affiant was at Palmer, Alaska, on October 27, 1944, and that on said date he was seized with a severe inflammation in the abdomen and was examined by Dr. David Hoehn, a physician and surgeon of Palmer, Alaska. That on account of the severity of the attack said physician was unable to diagnose his case with certainty, gave him some medicine, and arrangements were made for subsequent and further examination and treatment. That later, on said date, affiant drove to Anchorage, Alaska, to attend to business matters, and that on October 29, 1944, being Sunday, affiant returned to Palmer, Alaska, entered the hospital at that place, and was in said hospital on Monday, October 30, 1944, the day and date on which he was ordered to report for induction as above stated. That he underwent an operation for appendicitis on Tuesday, October 31, 1944.

“That since the trial of said action affiant has learned through his attorney, Karl Drager, now deceased, and from recent conversation with the said Dr. David Hoehn, that on the 30th day of October, 1944, an Army medical officer at Fort Richardson called Dr. Hoehn by telephone and that

a conversation ensued between said Army medical officer and Dr. Hoehn in which the said Army medical officer at Fort Richardson instructed Dr. Hoehn to continue his treatment of affiant at the said Palmer, Alaska, hospital and not to cause the transfer of affiant to the Fort Richardson military reservation, and stating at that time that it was not necessary for affiant to report for induction on the day set therefor, to-wit, October 30, 1944, nor for ninety days thereafter. That thereafter affiant was operated upon as above stated. [78]

“That to affiant’s best recollection he was not informed of the above facts relating to said telephone conversation at the time the same occurred, nor thereafter while at the Palmer hospital, nor until after his trial, as above stated, nor was his attorney, Karl Drager, so informed. That on a new trial of this action affiant will be able to prove the facts relating to said telephone conversation, and that affiant is informed by his attorney, George B. Grigsby, that said facts are material to his defense.

“Affiant further states that he is informed and believes, that the Army medical officer who engaged in said telephone conversation is Captain Sidney Leschner; that his attorney, George B. Grigsby, within the past three days, had a conversation with Colonel Albrecht, an Army medical officer at Fort Richardson, in which conversation the said Colonel Albrecht informed affiant’s said attorney that he was cognizant of a conversation engaged in by an Army medical officer at Fort Richardson, about

October 30, 1944, relating to the matters hereinabove set forth, and that he, the said Colonel Albrecht, believed that said conversation was between the Captain Sidney Leschner and the doctor at the Palmer hospital; that the said Captain Leschner was the induction officer at Fort Richardson at said time and had authority in the premises.

“/s/ JOHN FANNON

“Subscribed and sworn to before me this 8th day of June, 1945.

“/s/ GEORGE B. GRIGSBY

“Notary Public for Alaska

“My commission expires 5-14-1947.

“Service admitted June 8, 1945.

“/s/ RAYMOND E. PLUMMER

“Asst. United States Attorney” [79]

And thereafter on the 11th day of June, 1945, the Court having heard the arguments of counsel on said motion for a new trial denied the motion, to which ruling defendant excepted and the exception was allowed.

Thereafter on the 12th day of June, 1945, the Court pronounced sentence against the defendant, whereby the defendant was sentenced to be imprisoned in the Federal Jail at Anchorage, Alaska, for the term of one year, and to pay a fine of \$2,000.00 and stand committed until said sentence is executed; and that upon his failure to pay the fine

imposed, he be imprisoned in the Federal jail at Anchorage, Alaska, one day for each \$2.00 thereof, which said judgment and sentence was thereafter reduced to writing and signed by the Judge of the Court on the 27th day of June, 1945.

And thereafter on the 23rd day of June, 1945, an order was made in open court and entered in the court journal, said order being as follows:

“No. 1848 Cr.

M. O. EXTENDING TIME TO FILE
BILL OF EXCEPTIONS

“Now at this time, on oral motion of George B. Grigsby, Esq., counsel for the defendant in cause No. 1848 Cr., entitled United States of America, plaintiff, vs. John Fannon, defendant.

“It Is Ordered that the appellant shall have sixty (60) days in which to procure to be settled and filed with the Clerk of the Court a bill of exceptions in said cause.

“Entered Court Journal No. G10, Page No. 423, June 23, 1945.” [80]

PLAINTIFF'S EXHIBIT No. 2

Selective Service System

Transfer

Preinduction Physical Examination

Application

Transfer by Order of the State Director

Date July 25, 1944.

Name (First) John (Last) Fannon (Order No.)
2253.

Present address 428 East 4th Ave., Anchorage,
Alaska.

I present herewith my Order to Report: Preinduction Physical Examination (Form 215) issued by Local Board 1, Kelso, Wash. Reason for absence from my own Local Board area:

I respectfully request that I be transferred for preinduction physical examination to the Local Board having jurisdiction over my present address given above.

If I am found qualified for service and ordered to report for induction, I request that I be inducted from:

—The Local Board with which this application is filed.

Request for Transfer for Delivery (Form 154) is attached.

—My own Local Board.

.....
(Signature of registrant)

DSS Form 216

(On back)

FIRST ENDORSEMENT

Local Board No. 1 02

005

Aug 15 1944

001

Anchorage Alaska

(Local Board of Transfer Date
Stamp With Code)

Date 8-11, 1944

This request for transfer for preinduction physical examination is approved.

The registrant has requested transfer for induction.

Request for Transfer for Delivery (Form 154) is attached.

The registrant has requested that he be inducted at his own Local Board.

/s/ LOUISE ANNABEL,

(Member or clerk, Local
Board)

SECOND ENDORSEMENT

Local Board No. 1 97

Cowlitz County 015

Jul 25 1944 001

Post Office Building

Kelso, Washington

(Registrant's Own Local Board

Date Stamp with Code)

Date July 25, 1944

This registrant is hereby transferred for preinduction physical examination.

Attached:

XX Original and all copies of Report of Physical Examination and Induction (Form 221).

— Other information which should be forwarded to the induction station for consideration when giving registrant preinduction physical examination.

/s/ RUTH ANDERSON,

(Asst. clerk, registrant's own
Local Board)

PLAINTIFF'S EXHIBIT No. 3

Selective Service System

Order to Report

Preinduction Physical Examination

(Date of mailing) 11 August, 1944

Local Board No 1 02

Aug 11 1944 005

001

Anchorage Alaska

(Local Board Date Stamp With Code)

The President of the United States,

To (First Name) John (Last Name) Fannon,
(Order No.) 2253.

Greeting:

You are hereby directed to report for preinduction physical examination at Room 128 Federal Bldg., Anchorage, Alaska, at 8 a. m., on the 23d of August, 1944.

/s/ LOUISE ANNABEL,

(Clerk of the Local Board)

IMPORTANT NOTICE TO REGISTRANT

Registrant who believes he has a disqualifying defect.—If you believe that you have some defect which will disqualify you for service you may, on or before the day of, 194..., appear in person at the office of the Local Board, or, if you are unable by reason of such defect to

personally appear, you may submit an affidavit from a reputable physician or an official statement by an authorized representative of a Federal or State agency to the effect that such physician has personal professional knowledge or such authorized representative has official knowledge of your defect, the character thereof, and that you are unable to personally appear due to the character of the defect. The Local Board may send you to the Local Board examining physician, and, if it does so, it shall be your duty to appear at the time and place designated by the Local Board and to submit to such examination as the examining physician shall direct. If the Local Board determines that your defect does disqualify you for service you will receive a Notice of Classification (Form 57) advising you that you have been placed in Class IV-F. Unless prior to the date fixed for your pre-induction physical examination, you receive such a Notice of Classification (Form 57) advising you that you have been placed in Class IV-F, you must report for your pre-induction physical examination as directed.

Every registrant.—When you report for preinduction physical examination you will be forwarded to an induction station where you will be given a complete physical examination to determine whether you are physically fit for service. If you sign a Request for Immediate Induction (Form 219), and you are found qualified for service, you will be inducted immediately following the completion of your preinduction physical examina-

tion. Otherwise, upon completion of your preinduction physical examination, you will be returned to this Local Board. You will be furnished transportation and meals and lodgings when necessary. Following your preinduction physical examination you will receive a certificate issued by the commanding officer of the induction station showing your physical fitness for service or lack thereof.

If you fail to report for preinduction physical examination as directed, you will be delinquent and will be immediately ordered to report for induction into the armed forces. You will also be subject to fine and imprisonment under the provisions of section 11 of the Selective Training and Service Act of 1940, as amended.

If you are so far from your own Local Board that reporting in compliance with this order will be a hardship and you desire to report to the Local Board in the area in which you are now located, take this order and go immediately to that Local Board and make written request for transfer for preinduction physical examination.

DSS Form 215

PLAINTIFF'S EXHIBIT No. 4

Local Board No. 1 97

Cowlitz County 015

Jul. 24 1944 001

Post Office Building

Kelso, Washington

Local Board No. 1 97

Cowlitz County 015

Sep 20 1944 001

Post Office Building

Kelso, Washington

(Local Board date stamp with code)

CERTIFICATE OF FITNESS

(First Name) John, (Middle Name) none, (Last Name) Fannon, (Order No.) 2253.

The above-named registrant having been given a Preinduction Physical Examination was found:

1. X Physically fit, acceptable for general military service.

2. — Physically fit, acceptable for limited military service.

3. — (Crossed out)

4. — Rejected, physically unfit.

5. — Rejected, physically fit but unacceptable for other reasons.

(Date of examination) 25 Aug 1944

Name /s/

ODD A. LUND,

Induction Station Commander.

Rank Odd A. Lund, Flt. CAC

Station APO 942, U. S. Army

STATUS NOT DETERMINED

6. — Status not determined because serology is not satisfactory. The Local Board is requested to require the registrant to submit to further serological tests in order to determine whether his serology is definitely positive or definitely negative. In order that the armed forces may determine his acceptability, the results of such tests will be mailed to the Induction Station together with DSS Form 221 and other records originally forwarded. [84]

7. — Status not determined because of incomplete records. The Local Board is requested to secure and mail to the Induction Station the records listed below, in order that the armed forces may determine the registrant's acceptability. Such records will be mailed to the Induction Station together with registrant's DSS Form 221 and other records originally forwarded.

Records required:

.....
.....

REQUEST TO VERIFY SEROLOGY OF ACCEPTED REGISTRANT

8. — The above-named registrant was found to be acceptable as indicated in Item 1, 2, or 3 above, but his serology was positive. The Local Board is, therefore, requested to require the registrant to submit to further serological tests in order to determine whether his serology is definitely positive or definitely negative; the results of such tests to

be transmitted with the registrant when he is forwarded for induction.

Name.....

Induction Station Commander

Rank.....

Station.....

DSS Form 218

PLAINTIFF'S EXHIBIT No. 5

Local Board No. 1 97

Cowlitz County 015

Sep 26 1944 001

Post Office Building

Kelso, Washington

(Local Board Date Stamp With Code)

(Date of mailing): Sept. 26, 1944.

ORDER TO REPORT FOR INDUCTION

The President of the United States,
To John Fannon, Order No. 2253.

Greeting:

Having submitted yourself to a local board composed of your neighbors for the purpose of determining your availability for training and service in the land or naval forces of the United States, you are hereby notified that you have now been selected for training and service therein. [85]

You will, therefore, report to the local board named above at Local Board Office, Kelso, Wash. at 8: a. m. on the 12th day of October, 1944.

This local board will furnish transportation to an induction station. You will there be examined, and, if accepted for training and service, you will then be inducted into the land or naval forces.

Persons reporting to the induction station in some instances may be rejected for physical or other reasons. It is well to keep this in mind in arranging your affairs, to prevent any undue hardship if you are rejected at the induction station. If you are employed, you should advise your employer of this notice and of the possibility that you may not be accepted at the induction station. Your employer can then be prepared to replace you if you are accepted, or to continue your employment if you are rejected.

Willful failure to report promptly to this local board at the hour and on the day named in this notice is a violation of the Selective Training and Service Act of 1940, as amended, and subjects the violator to fine and imprisonment.

If you are so far removed from your own local board that reporting in compliance with this order will be a serious hardship and you desire to report to a local board in the area of which you are now located, go immediately to that local board and make written request for transfer of your delivery for induction, taking this order with you.

/s/ AVIS BENSON

Clerk of the local board.

D.S.S. Form 150

(Revised 1-15-43)

PLAINTIFF'S EXHIBIT No. 6

Transfer by Order of the State Director
 REQUEST FOR TRANSFER FOR DELIVERY
 To Local Board:

(First Name) John, (Last Name) Fannon, (Order No.) 2253.

Present address c/o Karl Drager, Anchorage, Alaska, which is in the area of the Local Board with which this application is filed.

Registrant's own Local Board 1 Kelso, Washington.

Reasons for absence from my own Local Board area: Living in Alaska.

I request that I be transferred for delivery to your Local Board.

.....

(Signature of registrant)

FIRST ENDORSEMENT

Local Board No. 1 02

005

Oct 27 1944 001

Anchorage, Alaska

(Local Board Date Stamp with Code)

The above request: Approved X

/s/ E. LIVINGSTON

Clerk of Local Board of
 Transfer

SECOND ENDORSEMENT

Local Board No. 1 97

Cowlitz County 015

Sep 001

Post Office Building

Kelso, Washington

(Local Board Date Stamp with Code)

The above registrant is hereby transferred to
your Local Board for delivery.

/s/ RUTH ANDERSON

Asst. Clerk of Registrant's
Local Board

DSS Form 154

(Rev. 1/10/44) [87]

The following are those letters, forms and documents included in plaintiff's Exhibit No. 1 and not heretofore appearing in this Bill of Exceptions, not having been read to the jury when plaintiff's Exhibit No. 1 was admitted in evidence, but which were submitted to the jury with the other exhibits in the case when the jury retired:

Local Board No. 1 02

Nov 6, 1944 005

001

Anchorage, Alaska

6 November, 1944

(Stamp)

Local Board No. 1 97

Cowlitz County 015

Nov 10 1944 001

Post Office Building

Kelso, Washington

Re: John Fannon

ON12253

Gentlemen:

Attached please find the DSS Form 550 on which your above-named registrant was reported to the United States Attorney when he failed to report for induction on 30 October, 1944.

This is forwarded to you so that you may report the delinquency on DSS Form 551, according to Selective Service regulations.

Very truly yours,

W. J. McDONALD,

Chairman, Local Board No. 1,

Anchorage, Alaska

By /s/ LOUISE ANNABEL

Clerk.

1 August, 1944

John Fannon

c/o Karl Drager

Anchorage, Alaska

re: Order No. 2253

Dear Sir:

We have your letter of 25 July, 1944 requesting postponement of induction and we wish to advise

that following your preinduction physical examination and before you are ordered [88] to report for active duty, local board will give consideration to your request and will advise you at that time.

Yours truly,

COWLITZ COUNTY LOCAL

BOARD,

WALTER J. VITOUS,

Chairman

By.....

Clerk

AB:ra

Anchorage, Alaska

May 10, 1944

Local Board No. 1, Cowlitz County

4-F

Post Office Building

Kelso, Washington

Gentlemen:

Re: John Fannon—Order No. 2253

In conformity with the requirements of the Selective Service Act, I do herewith make report of a change in my status, to-wit: my marital status has been changed in the following respect: A divorce was granted to my former wife and I have remarried. My present wife was a widow with a child, Dorothy Pickert, age 11 years, and we now reside at 428 East Fourth Avenue, Anchorage, Alaska.

As to my employment status, I am in a little

difficulty with the Civil Authorities and in custody of bail. I have made application for, and have been promised, upon my release from said custody, employment in the fishing industry for the fishing season, either in this vicinity or in the vicinity of Bristol Bay.

However, my address will remain unchanged and proper provisions will be made for forwarding or contacting.

Very truly yours,
/s/ JOHN FANNON

(Stamp)

Local Board No. 1 97

Cowlitz County 015

May 22 1944 001

Post Office Building

Kelso, Washington [89]

115.1

(Stamp)

Local Board No. 1 97

Cowlitz County 015

Oct. 25 1943 001

Post Office Building

Kelso, Washington

Mr. J. Charles Dennis

U. S. District Attorney's Office,

Seattle, Washington

Re: John Fannon

Order No. 2253

Dear Sir:

On June 19 1943, we reported the above-named registrant to you as a delinquent.

This registrant has now complied with Selective Service Regulations and may be released from the charge of delinquency reported on DS3 Form 279.

We wish to thank you for your assistance on this case.

Yours very truly,

COWLITZ COUNTY LOCAL
BOARD

(Local Board Designation)

By:

(Clerk of Board)

cc Director of Selective Service

Camp Murray, Washington

Letter of Release to U. S. District Attorney—
Prepare in Triplicate—Send 1 copy to District At-

torney; 1 copy to State Headquarters and 1 copy for file.

DSS Form 13

BOARD OF TRANSFER No. 1

Anchorage, Alaska

4-F

Date 12/30/43

Local Board No. 1

P. O. Bldg.

Kelso, Wash.

Re: John Fannon

ON-2253

Gentlemen:

This is to inform you that under the provisions of Part 663 of the Selective Service Regulations the above [90] captioned registrant of your local board has registered with this Board of Transfer No. 1. Any current information received relevant to the registrant's classification shall be forwarded to your local board.

He has given as his present address: Box 484, Anchorage, Alaska.

Very truly yours,

/s/ LOUISE ANNABEL,

Clerk, Board of Transfer

No. 1

(Stamp)

Local Board No. 1 97

Cowlitz County 015

Jan 11, 1944 001

Post Office Building

Kelso, Washington

(Envelope)

Selective Service Kelso

Local Board No. 1 97 May 28

Cowlitz County 015 7:30 PM (Stamp)

May 28 1943 001 1943

Post Office Building Wash.

Kelso, Washington

(Stamp) Moved, Left No Address.

(Stamp)

Local Board No. 1

Cowlitz County

Jun 4 1943

Post Office Building

Kelso, Washington

Not here—Gone to Alaska.

John Fannon

Lansing Hotel

Tacoma, Washington Address unknown

(Stamp) Tacoma June 3 12:30 PM 1943

June 2, 1943

Local Board No. 1 97

Cowlitz County 015

May 28, 1943 001

Post Office Building

Kelso, Washington

(Local Board Date Stamp with Code)

(Date of mailing) May 28, 1943. [91]

ORDER TO REPORT FOR INDUCTION

The President of the United States,

To John Fannon, Order No. 2253.

Greeting:

Having submitted yourself to a local board composed of your neighbors for the purpose of determining your availability for training and service in the armed forces of the United States, you are hereby notified that you have now been selected for training and service in the Armed Forces.

You will, therefore, report to the local board named above at Kelso Post Office Building at 8:00 A. M., on the 7th day of June, 1943.

The local board will furnish transportation to an induction station of the service for which you have been selected. You will there be examined, and, if accepted for training and service, you will then be inducted into the stated branch of the service.

Persons reporting to the induction station in some instances may be rejected for physical or other reasons. It is well to keep this in mind in arranging your affairs, to prevent any undue hard-

ship if you are rejected at the induction station. If you are employed, you should advise your employer of this notice and of the possibility that you may not be accepted at the induction station. Your employer can then be prepared to replace you if you are accepted, or to continue your employment if you are rejected.

Willful failure to report promptly to this local board at the hour and on the day named in this notice is a violation of the Selective Service Act of 1940, as amended, and subjects the violator to fine and imprisonment.

If you are so far removed from your own local board that reporting in compliance with this order will be a serious hardship and you desire to report to a local board in the area of which you are now located, go immediately to that local board and make written request for transfer of your delivery for induction, taking this order with you.

AVIS BENSON

Clerk of the local board

(Stamp)

Local Board No. 1 97

Cowlitz County 015

Jun 4 1943 001

Post Office Building

Kelso, Washington

D.S.S. Form 150

(Revised 7-13-42) [92]

Selective Service System
 Local Board No. 1 97
 Cowlitz County 015
 May 1 1943 001
 Post Office Building
 Kelso, Washington
 (Stamp of Local Board)

May 1, 1943

Director of Selective Service

State of Washington

Camp Murray, Washington

Re: DSS Form 281

Dear Sir:

The following-named registrant(s), reported to you on DSS Form 281 is (are) no longer delinquent:

Name of registrant: John Fannon.

Order Number: 2253.

Yours very truly,

COWLITZ COUNTY LOCAL
 BOARD

By:

(Clerk of Board)

DSS Form 11

The exhibits set forth referred to in the foregoing Bill of Exceptions are the only exhibits which went to the jury. Although the complete file of Local Board No. 1, Kelso, Washington, was admitted into evidence as plaintiff's exhibit No. 1, before the case went to the jury the trial judge examined the file and removed the exhibits which had

not been referred to during the trial and which were deemed irrelevant and immaterial to the trial of this cause. After this had been done by the trial judge counsel for both plaintiff and defendant examined the exhibits which were permitted to go to the jury and both counsel for the plaintiff and the defendant consented to such exhibits' being sent to the jury. [93]

The matters and things hereinabove in this Bill of Exceptions set forth not fully appearing of record, the said defendant John Fannon tenders and presents the foregoing as his Bill of Exceptions in said cause, and prays that the same be settled, allowed, signed and sealed and made a part of the record in said cause by this Court, pursuant to law in such cases.

Dated at Anchorage, Alaska, this 13th day of August, 1945.

/s/ GEORGE B. GRIGSBY,
Atty. for Defendant.

Service admitted this 13th day of August, 1945.

RAYMOND E. PLUMMER,
Assistant U. S. Attorney.

[Endorsed]: Filed Aug. 13, 1945.

Approved Bill of Exceptions filed in the District Court, Territory of Alaska, Third Division, Aug. 29, 1945.

M. E. S. BRUNELLE,
Clerk.

By LOUISE ANNABEL,
Deputy [94]

[Title of District Court and Cause.]

ORDER SETTTLING, ALLOWING AND APPROVING BILL OF EXCEPTIONS

The foregoing Bill of Exceptions having been filed and presented for settlement within the time allowed by law and the rules of Court, and having been examined by me and found to be a true and accurate statement of all the evidence introduced in the trial of the cause, and to contain a condensed narrative statement of the evidence in the cause, and to be true and correct, it is, therefore,

Ordered, that said Bill of Exceptions be, and the same hereby is, approved and settled as a bill of exceptions upon the appeal of the defendant to the United States Circuit Court of Appeals for the Ninth Circuit, and it is further

Ordered, that this order shall be deemed and taken as a certificate of the undersigned judge of this court who presided at the hearing of the said cause and before whom all the evidence in said cause was given, that the said bill of exceptions contains a condensed statement, all in narrative form except in several instances where the undersigned Judge has required that testimony and proceedings be given verbatim for a full understanding of the issues, of all the evidence given in said cause, including exhibits, upon which the verdict of the jury and judgment of the court are based. [95]

Done by the Court and ordered entered this
29th day of August, 1945.

/s/ ANTHONY J. DIMOND,
District Judge.

Entered Court Journal No. G 10, Page No. 551,
Aug. 29, 1945.

[Endorsed]: Filed Aug. 29, 1945. [96]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Now comes the defendant and appellant herein and files the following assignments of error upon which he will rely in the prosecution of his appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final judgment and sentence of this court pronounced on the 12th day of June, 1945, and signed and filed on the 27th day of June, 1945.

I.

That the court erred in overruling the motion of the defendant for a new trial based upon the ground, among others, that there was insufficient evidence to justify the verdict, to which ruling the defendant duly excepted and the exception was allowed.

II.

That the court erred in submitting the case to the jury, for the reason that there was not suffi-

cient evidence submitted to the jury to sustain a conviction, and no evidence whatever that the defendant did wilfully fail to report for induction at Fort Richardson, Alaska, on the 30th day of October, 1944, as charged in the indictment.

III.

That the court erred in the admission of certain [97] testimony of the witness Ruth V. Anderson, a witness called by the government, as follows.

The Witness: Referring to form D.S.S., dated June 14th, 1943, that is an official form of the department, Selective Service Form 281. This was the form that was mailed *that was mailed* to the registrant. (Witness reads paper) as follows: "June 14, 1943, to John Fannon, Order No. 2253, addressed to Lansing Hotel, Tacoma, Washington, The printed form is as follows: Dear Sir: According to information in possession of this local board, you have failed to perform the duty or duties, imposed upon you under the selective service law as specified below."——

Mr. Drager: I object on the ground that it is irrelevant and immaterial. It is too remote.

Mr. Plummer: You have availed yourself of letters dating back to August and September of 1943. I think the relevancy of this form is no more remote than those letters read in the previous examination by Mr. Drager.

Mr. Drager: I would like to know the purpose of it. I have a purpose in referring to the others. I can't see the purpose of this except to prejudice.

Mr. Plummer: May I state the purpose?

The Court: Yes.

Mr. Plummer: My purpose in having that read is that there are several other such forms in the file here, and it is my contention that the present charge is one of a series of events which are a part of a general scheme to evade the selective service law and I think that all delinquencies similar to the ones charged in this indictment are relevant to show it is a part of a scheme to evade the selective service law. [98]

The Court: I am not sure of that and the defendant hasn't been indicted for that; however the subject has already been opened up by part of an exhibit that was read at the instance of counsel for the defendant in a letter written by the defendant in which he referred to embarrassment he suffered by reason of failure to receive notice to report for induction and some legal action. This is part of the same subject and the subject is already before the jury. I shall admit it. Objection overruled and exception allowed. You may read it.

A. Commencing where I left off, the Notice of Delinquency. Failure to report for induction. You are therefore directed to report, by mail, telegraph, or in person, at your own expense, to this local board, on or before 9:00 P. M., on the 19th day of June, 1943. Failure to report on or before the day and hour mentioned is an offense punishable by fine or imprisonment or both.

Q. Will you turn to D.S.S. Form 281 dated April 10, 1943, and read that to the court and jury, please.

Mr. Drager: Same objection.

The Court: Same ruling. Objection overruled and exception allowed.

A. Notice of delinquency. April 10, 1943, to John Fannon, Order No. 2253, Lansing Hotel, Tacoma, Washington. The same form. Dear Sir: According to information in possession of this Local Board, you have failed to perform the duty or duties, imposed upon you under the selective service law as specified below. Failure to report for Physical examination. You are therefore directed to report by mail, telegraph, or in person, at your own expense, to this Local [99] Board, on or before 5:00 P. M. on the 15th day of April, 1943. Failure to report on or before the day and hour specified is an offense punishable by fine or imprisonment, or both. Clerk of Local Board.

IV.

That the court erred in refusing to instruct the jury as requested by the defendant as follows, which was requested by the defendant before the jury was instructed, and to which ruling the defendant excepted and the exception was allowed.

“A criminal intent, as explained in these instructions, is always necessary to constitute a crime, and when such criminal intention does not appear, from all the facts and circumstances proved on the trial, then the act complained of cannot be deemed a crime. Misadventure or accident, when the circumstances rebut the presumption of criminal intention and of criminal negligence, as explained in these

instructions, are not deemed, in law, criminal, however injuriously they may affect persons or property. And, in this case, the matter of intent is an essential element of the offense charged, which the government must prove to the satisfaction of the jury beyond a reasonable doubt, and if the evidence fails to establish, beyond a reasonable doubt, that the defendant was able to report for induction and failed and neglected to do so, with the intent to wilfully evade or avoid induction, it will be the duty of the jury to acquit the defendant.

“In considering the matter of intent, it is competent for the jury to consider all of the facts in connection therewith, including the physical ability of the defendant to report or not to report, his effort or lack of effort [100] to inform his Draft Board of his whereabouts, and, having considered all of these things, to authorize a conviction, the facts and circumstances must not only all be in harmony with the guilt of the accused, but they must be of such character as to be inconsistent with his innocence and consistent with a wilfull intent.”

V.

That the court erred in instructing the jury as follows, to which instruction the defendant excepted in the presence of the jury and before they retired and which exception was allowed:

“You will observe that the indictment charges the defendant to have committed the crime set out in the indictment “wilfully” and “Knowingly.” These words are to be given full force and effect

by you because they are a material part of the indictment. If one does a thing wilfully and knowingly, he does it not only with knowledge and understanding of what he is doing, but also intentionally; and one who commits a criminal act wilfully and knowingly understands and knows the nature of the crime he is committing and he commits it with criminal intent. An accidental or inadvertent violation of the law can be done neither knowingly or wilfully.

So, in this case, to warrant conviction, it is necessary for you to find beyond a reasonable doubt that the defendant failed and neglected to report for induction, as set out in the indictment and under the circumstances therein stated, and that he so failed and neglected with knowledge and understanding of the nature of his act and with criminal intent to avoid compliance with the law concerning such induction.” [101]

The foregoing instruction was objected to by the defendant on the ground that it does not cover the matter of intent in such language as make clear to the jury the proper explanation of criminal intent, said objection being fully set forth in the Memorandum of Exceptions, which is incorporated into the Bill of Exceptions herein.

VI.

That the court erred in giving the jury the following instruction:

“I instruct you that the essential elements which the government must prove of the charge charged in the indictment, are

First: That the said violation occurred within the jurisdiction of this court;

Second: That said violation occurred on or about the 30th day of October, 1944, or within three years before the finding of the indictment. * * *

On the ground that the indictment charged the defendant with having failed to report on October 30th, 1944, not before or after that date, on the ground that time became and was an essential ingredient of the offense, and on the ground that evidence was admitted in the case of other delinquencies of the defendant under the theory that they showed a general scheme of evasion of the law, and that said instruction was misleading to the jury and might have influenced them to convict the defendant for offenses for which he was not on trial."

VII.

That the court erred in admitting the following testimony of the government witness Louise Annabell: [102]

Q. (By Mr. Plummer): I would like to have this file handed to the witness on the stand. Calling your attention to the copy of a letter in your files which purports to be a memorandum of a telephone conversation which you had with Dr. Captain Leshner on October 30, 1944, do you have that before you? A. Yes sir.

Q. What did Dr. Leshner state relative to this defendant?

Mr. Drager: Object to the question as leading.

The Court: Objection overruled.

Mr. Drager: The letter hasn't been identified or introduced.

Q. Will you refer to it and state, if you can, what Captain Leshner said relative to Mr. Fannon during the course of that conversation?

Mr. Drager: She said she couldn't remember.

Q. Will you refresh your recollection from that letter?

A. Captain Leshner told me that inasmuch as the registrant John Fannon was an inductee he could be removed, or rather he would be accepted at Ft. Richardson and held there under observation for the determination of his condition.

The aforesaid testimony should have been excluded by the court of its own motion, as hearsay, and prejudicial to the defendant.

VIII.

That the court erred and abused his discretion in overruling defendant's amended motion for a new trial, filed May 1st, 1945, to which ruling defendant excepted and the exception was allowed.

IX.

That the court erred and abused his discretion in overruling defendant's motion for a new trial, filed June 8th, 1945, to which ruling defendant excepted and which exception was allowed. [103]

Wherefore, defendant and appellant prays that the judgment in the above entitled cause be reversed and the cause remanded, with instructions

to the trial court as to further proceedings therein and for such other and further relief as may be just in the premises.

/s/ GEORGE B. GRIGSBY

Attorney for Defendant and
Appellant

Service admitted Sept. 1st, 1945.

/s/ RAYMOND E. PLUMMER

Assistant U. S. Attorney

[Endorsed]: Filed Sept. 1, 1945. [104]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the District Court, Third Division,
Territory of Alaska:

You are hereby requested to make a transcript of record to.....filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal taken in the above entitled cause, and to include in such transcript of record the following papers of record in said cause, to-wit:

1. Indictment.
2. Arraignment and Plea of Not Guilty (Court Minutes April 2nd, 1945).
3. Verdict.

4. Minute Order June 12th, 1945, Pronouncing Judgment and Sentence.
5. Notice of Appeal (Filed June 16th, 1945).
6. Minute Order June 23rd, 1945, fixing time for settlement of Bill of Exceptions.
7. Judgment and Sentence (Filed June 27th, 1945).
8. Bill of Exceptions.
9. Assignments of Error.
10. This Praecipe.
11. Clerk's Certificate to Transcript.

Respectfully,

/s/ GEORGE B. GRIGSBY

Attorney for Appellant

Service Admitted Sept. 11th, 1945.

/s/ RAYMOND E. PLUMMER

Assistant U. S. Attorney

[Endorsed]: Filed Sept. 11, 1945. [105]

[Title of District Court and Cause.]

To the Clerk of the District Court, Third Division,
Territory of Alaska:

The defendant in the above entitled action objects to the inclusion in the Transcript of Record on Appeal, the transcript of the bind-over proceedings in the United States Commissioner's Court for the

Precinct of Anchorage, Third Division, Territory of Alaska, as called for in the Praecipe of the United States Attorney for said Division, on the ground that said transcript of said United States Commissioners is not a part of the record in the above entitled action.

Dated: September 24, 1945.

/s/ GEORGE B. GRIGSBY

Attorney for Defendant and
Appellant

[Endorsed]: Filed Sept. 24, 1945. [106]

[Title of District Court and Cause.]

AMENDED COUNTER-PRAECIPE FOR
TRANSCRIPT OF RECORD

To the Clerk of the District Court, Third Division,
Territory of Alaska:

You are hereby requested to make, certify, and transmit a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, and to include in such transcript of record the following papers of record in said cause, to-wit:

(1) Entire transcript of proceedings before the United States Commissioner.

(2) Minute Order Setting Time for Arraignment (entered March 28, 1945).

(3) Minute Order Setting Cause for Trial (entered April 3, 1945).

(4) Journal Entry regarding Trial by Jury, dated April 9, 1945, Entered Court Journal No. G10, Page No. 161.

(5) Journal Entry regarding Trial by Jury, dated April 9, 1945, Entered Court Journal No. G10, Page No. 163.

(6) Journal Entry regarding Trial by Jury, dated April 10, 1945, Entered Court Journal No. G10, Page No. 166.

(7) Journal Entry regarding Trial by Jury, dated April 10, 1945, Entered Court Journal No. G10, Page No. 166. [107]

(8) This Amended Counter-Praecipe for Transcript of Record.

(9) Clerk of the Court's certificate of transcript.

Dated at Anchorage, Alaska, this 28th day of September, 1945.

/s/ RAYMOND E. PLUMMER
Assistant United States Attorney, Anchorage,
Alaska, Attorney for Plaintiff-Appellee.

Service acknowledged by receipt of a copy of the above and foregoing Counter-Praecipe for Transcript of Record this 28th day of September, 1945.

/s/ GEORGE B. GRIGSBY
Attorney for Defendant-Appellant

[Endorsed]: Filed Sept. 28, 1945. [108]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD

United States of America,

Territory of Alaska, Third Division—ss:

I, M. E. S. Brunelle, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the foregoing and hereto annexed 108 pages, numbered from 1 to 108, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above-entitled cause as the same appears on the records and files in my office; that this transcript is made in accordance with the praecipe filed in my office on the 11th day of September, 1945; and the amended counter-praecipe filed in my office on the 28th day of September, 1945; that the foregoing transcript has been prepared, examined and certified by me, and that the costs thereof, amounting to \$35.55 has been paid to me by George B. Grigsby, counsel for the appellant herein.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court this 28th day of September, 1945.

[Seal] M. E. S. BRUNELLE
Clerk of the District Court, Territory of Alaska,
Third Division.

[Endorsed]: No. 11107. United States Circuit Court of Appeals for the Ninth Circuit. John Fannon, Appellant, vs. The United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court for the Territory of Alaska, Third Division.

Filed October 16, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.